

**IN THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

**IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

CASE NO: ANUHCR2019/0026

BETWEEN:

THE QUEEN

v

KAREEM RICHARDS

Appearances:

Mrs. Shannon Jones-Gittens, Counsel for the Crown

Mr. Michael Archibald, Counsel for the Defendant

Before: The Honourable Mr Justice Colin Williams

2022: June 2nd, 10th, 17th
July 1st, 22nd

SENTENCING DECISION

- [1] **WILLIAMS J.:** The defendant, Mr. Kareem Richards was indicted on one count of murder contrary to the Common Law.
- [2] The particulars of the offence on the indictment state that: "Kareem Richards on the 10th day of February, 2018 at Jennings in the Parish of Saint Mary in Antigua and Barbuda, murdered Ogwambi Marshall."
- [3] Mr. Richards pleaded not guilty to the offence as charged.
- [4] A jury was duly empanelled on the 30th May, 2022 to try the case.

- [5] The Crown over a two-day period elicited evidence from eight of the nineteen witnesses listed on the back of the indictment. (The Crown prior to the start of the trial filed and served Notice of Additional Evidence regarding two other witnesses, neither of whom in the circumstances was called).
- [6] The defence opted not to cross-examine four of the witnesses who testified.
- [7] Counsel Mr. Michael Archibald on behalf of the defendant, Mr. Richards, requested that the indictment be read to the defendant.
- [8] Mr. Kareem Richards then entered a plea of not guilty to murder but guilty to manslaughter.
- [9] Prosecuting Counsel, Mrs. Shannon Jones-Gittens indicated that the Crown was willing to accept that plea.
- [10] A formal verdict of guilty to manslaughter was returned by the jury.
- [11] Mrs. Jones-Gittens provided the additional facts in the case, in particular the medical findings detailing the wounds inflicted on the deceased. Those facts were not disputed by the defendant.
- [12] An order was made for a Social Inquiry Report to be provided by the Family and Social Services Division to assist the Court in the sentencing process.

Maximum Sentence

- [13] The **Offences Against the Person Act**, Cap. 300 of the Laws of Antigua and Barbuda, Revised Edition 1992 states at section 5:

“Whosoever shall be convicted of manslaughter shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding thirty-five years, with or without hard labour, or to pay such fine as the Court may award, in addition to or without any such discretionary punishment as aforesaid.”

Victim Impact

- [14] Ms. Joycelyn Marshall, who is the mother of the deceased, testified as to the impact Mr. Ogwambi Marshall’s death has had on her. Ms. Marshall said that the deceased was her “favourite boy” and that she cries every day.
- [15] Ms. Marshall recalled buying a weed whacker for her son. She said that now her son is not there, things are “so much harder.”

Mitigation

- [16] Mr. Archibald noted that the Defendant was now 41-years-old. Counsel also noted that the Defendant migrated to Antigua and Barbuda at age 14 and has an unblemished antecedent record.
- [17] Counsel Archibald noted that the loss of life was rather sad. He urged that due consideration be given to the content and tone of the Social Inquiry Report. According to Mr. Archibald, the indications are that the Defendant is of a quiet disposition and that the incident was “completely out of character.”
- [18] Mr. Archibald stated that out of respect and courtesy he would not repeat what the Senior Probation Officer detailed in terms of the “community response” contained in the Social Inquiry Report. He however noted that page 6 of that report contained information from random members of the community in which both the deceased and the Defendant lived; those responses Mr. Archibald felt ought to be borne in mind. [The comments were adverse to the deceased].

Social Inquiry Report

- [19] Senior Probation Officer Mrs. Carolyn C. Cornelius-Hector conducted investigations for the Social Inquiry Report during the period 9th to 15th June, 2022. The penultimate paragraph of her report states:
- “All the persons interviewed described the defendant as very quiet and some assumed that it was provocation that led to the displayed behavior of the defendant. All persons interviewed would like the Court to show some leniency to the defendant.”
- [20] Mrs. Cornelius-Hector also reported that during her interview with Mr. Richards, he described feeling that he was “cornered” prior to the incident and that “fear over took” him. According to the Social Worker, in speaking with the Defendant about the incident: “Mr. Richards said he cannot take it back but he is asking for forgiveness.”

Construction of Sentence

- [21] In order to arrive at a just and proper sentence, two things must be done: (1) bear in mind the four principles of sentencing (retribution, prevention, deterrence and rehabilitation); and (2) apply the sentencing guidelines of the Eastern Caribbean Supreme Court.
- [22] With regard to the principles of sentencing, the factor that is most applicable is retribution – the punishment must fit the crime. Deterrence is also of some importance. It is necessary for would be offenders to know that there are serious consequences for transgressing. The other two factors however do not feature greatly with regard to this Defendant: given his clean record there is no need for prevention; and given the realities at Her Majesty’s Prisons with the limitations of programmes and/or beneficial activities, rehabilitation even though a desirable and laudable goal, may not be a primary consideration.

- [23] In constructing the sentence, the first step is to determine the starting point.
- [24] The circumstances of this offence has elements of factors which appear in seriousness Level B – Medium. There was apparent provocation commencing prior to the incident. There were the comments and aspersions being cast about the Defendant and even talk of the existence of a video. The use of the weapon on the night in question was somewhat spontaneous.
- [25] In consulting the grid, seriousness Level B is in the range 10 to 30 years with a starting point of 20 years. The recommended starting point of 20 years is adopted.
- [26] With respect to the offence, there are no notable factors to tilt the scale of the aggravating and mitigating factors one way or the other. The number of injuries inflicted although significant, have to be considered in light of the circumstances in which they were in fact inflicted, given the nature of the provocation and the Defendant's perception of the environment at the premises.
- [27] As far as the next step in this stage is concerned, adjustment is to be made for the aggravating and mitigating factors as they relate to the Defendant. There are no aggravating factors with regard to the Defendant personally. On the other hand, Mr. Richards was hitherto of good character; he indicated through the Social Worker his remorse; indications are that his former employers and members of the community in which he resided considered him favourably. The mitigating factors exceed the aggravating factors. A reduction of two years from the starting point is considered to be reasonable.
- [28] With regard to the Defendant's guilty plea, it is noted that he pleaded guilty to the lesser offence and that he did so after the commencement of his trial. There was no indication that the Defendant prior to the commencement of the matter, signaled a willingness to plead guilty to the lesser offence. How therefore must one treat with the situation of a guilty plea to a lesser offence where a trial in fact commenced for the original offence? Should the Defendant lose the access to the full credit for an early guilty plea?
- [29] There is nothing to indicate either that the guilty plea to manslaughter was previously made available by the Crown to the Defendant.
- [30] The issue of the discount for the guilty plea is resolved this way: the charge of murder was always what the Defendant faced; the guilty plea to manslaughter came after the murder trial commenced. That plea was made at the first opportunity after manslaughter as an alternative to murder became available. In those circumstances, Mr. Richards is to receive the full one-third discount for pleading guilty at the first opportunity to manslaughter.
- [31] One-third of eighteen is six, so the defendant will receive a further credit of six years.
- [32] Mr. Richards was detained by the police on or about the 11th February, 2018. He therefore was on remand for 4 years, three months and 18 days before his guilty plea on the 2nd June, 2022. That time has to be accounted for.

The Sentence

- [33] Using the starting point of 20 years, a figure of two years is subtracted for the mitigating factors exceeding the aggravating factors as far as the defendant, Mr. Richards is concerned. From the remaining figure of 18 years, the full one-third discount is applied for the guilty plea, leaving 12-years. Mr. Kareem Richards has been in custody of the police and prison authorities of 4-years, three-months and 18-days up to the date of his guilty plea on the 2nd June, 2022; that time must be subtracted from the 12-years.

Colin Williams
High Court Judge

By the Court

Registrar