

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

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

CASE NO: ANUHCR 2017/0064

BETWEEN:

**THE QUEEN
and
KENROY JOSEPH**

Appearances:

Mr. Sean Nelson, Counsel for the Crown
Mr. Lawrence Daniels, Counsel for the Defendant

Before: The Honourable Mr Justice Colin Williams

2021: November 4th

JUDGMENT ON SENTENCING

- [1] **WILLIAMS J.:** On the 28th October, 2021 a jury unanimously convicted Mr. Kenroy Joseph of manslaughter in relation to the death of Lucene Glenex Brodie.
- [2] Mr. Joseph was indicted for the offence of murder. The jury found that Mr. Joseph acted as a result of provocation and so was guilty of the lesser offence of manslaughter.
- [3] Mr. Joseph was sentenced to ten years imprisonment. The computation of his sentence to commence from the date of his arrest on the 24th February, 2016.
- [4] At the sentencing hearing, Crown Counsel Mr. Sean Nelson requested that the Judge's reasons for the sentencing decision be documented in writing.

Background

- [5] What are the facts that gave rise to this matter?

- [6] In February 2016, there was a drought in Antigua. This drought affected Mr. Joseph who was a farmer. It was costing him \$320.00 a week to have water delivered to his farm; and day care for his daughter was \$300.00 a week. Mr. Joseph needed to supplement his income. He spoke with his area representative who in turn made arrangements for Mr. Joseph to work at the Mac Pond Playing Field, where some construction work was being done.
- [7] The deceased Lucene Glenex Brodie worked on the construction project at the Mac Pond Playing Field as a mason.
- [8] The first week after the area representative made the arrangements, Mr. Joseph was employed for three days as a labourer at the Mac Pond Playing Field. Mr. Joseph spoke again to the area representative on the weekend. Mr. Joseph explained that the few days a week would not be sufficient. The representative made a call to the supervisor of the project.
- [9] The following day, Monday the 22nd February, 2016 the supervisor told Mr. Joseph that his services would not be needed after that day.
- [10] The supervisor was Mr. Joseph's cousin.
- [11] On the afternoon of Wednesday the 24th February, 2016 sometime after 5:00 p.m., Mr. Joseph, after leaving his farm, went to the Mac Pond Playing Field area. His daughter lived in that area as well. Mr. Joseph started shouting at the supervisor saying: "You mean me and you is family and you taking food from out of my mouth and you know I have my little daughter to care for. You is a dog!"
- [12] When he started shouting at the supervisor, Mr. Joseph was at the Southwestern end of the playing field and the supervisor was some distance away towards the Northern end of the playing field. Mr. Brodie was, that afternoon, assisting in digging out some grass on the field; he was using a mattock. Mr. Joseph saw Mr. Brodie remove the mattock stick from the iron part of the tool.
- [13] Mr. Joseph entered the playing field area. He was walking in the direction towards where his daughter lived. It was the same direction in which Mr. Brodie was working. Mr. Joseph and Mr. Brodie got into an exchange of words. The argument escalated.
- [14] Mr. Brodie struck Mr. Joseph's hand with the mattock stick, breaking a bottle that Mr. Joseph had in his hand. At some point Mr. Joseph drew a cutlass he had in a pouch by his side and the two men fought each other with the implements they had. The cutlass was struck from Mr. Joseph's hand at one point, but he managed to retrieve it. Mr. Brodie slipped at one time as he approached Mr. Joseph. At the end of the altercation, Mr. Brodie had multiple chops to his head and upper body. Mr. Joseph was also struck; he had injuries to his head, arm and chest, but they were far less serious than those sustained by Mr. Brodie.
- [15] Mr. Brodie was taken to the hospital. He was seen at the Emergency Department. He admitted to the Intensive Care Unit where he spent five days. He was then transferred to the general ward. There was no need for surgical intervention. On the 4th March, 2016 he was deemed stable enough to be

discharged from the hospital by the medical personnel there. Mr. Brodie spent a total of 10-days at the hospital.

- [16] Mr. Brodie returned to the hospital on the 8th March, 2016 to have the sutures to his three scalp lacerations removed. On the 11th March, 2016 he went to the hospital for physiotherapy. Then on Sunday the 13th March, 2016 Mr. Brodie had some complaints about breathing and he was taken by ambulance to the hospital. On that last occasion he was examined, some tests done and then he was discharged.
- [17] On the 16th March, 2016 Mr. Brodie died of bilateral pulmonary thromboembolism, secondary to immobilization, which was as a consequence of penetrating head injuries.

Sentencing Hearing

- [18] Counsel Mr. Lawrence Daniels on behalf of the prisoner in the dock addressed the Court as to what he considered to be the relevant factors. Mr. Nelson on behalf of the Crown called Ms. Glenique Brodie, a daughter of the deceased, to provide an insight into the impact the death has had on the surviving family. Mr. Nelson also made relevant submissions on behalf of the Crown.

Submissions on behalf of Mr. Joseph

- [19] Counsel Daniels noted that his client is at present aged 39 years. Mr. Joseph was 34-years old at the time of the offence. He is the father of a 9-year-old girl.
- [20] Counsel stated that Mr. Joseph lived all his life in All Saints Village and in his youth, represented All Saints in the sports of cricket and football.
- [21] Mr. Joseph was a farmer by profession. He was a hardworking person, Counsel said.
- [22] Mr. Joseph has no previous convictions for any offence. According to Mr. Daniels: "But for this incident, Mr. Joseph would have continued with his hard work."
- [23] Counsel said that Mr. Joseph was "deeply sorry for the entire incident." Counsel noted that Mr. Joseph during the trial, described how the incident unfolded.
- [24] Mr. Daniels posited that the prisoner in the dock had no real intent to kill the deceased. Counsel noted that Mr. Joseph received injuries to various parts of his body, for which he received medical care.
- [25] Mr. Daniels noted that on the day the altercation when the injuries were inflicted, Mr. Joseph experienced a sudden and temporary loss of self-control. Counsel said that Mr. Joseph "was under the impression that he could have defended himself and so he did. Unfortunately, in so doing, having

inflicted injury to the deceased [he] went beyond what [the jury found to be] was necessary in the circumstances.”

- [26] Counsel suggested that if on the day of the incident, the deceased had the upper hand, that fortunes may well have been quite different.
- [27] Mr. Daniels urged that it be noted that the commission of the offence did not involve any planning. He stated that neither was the offence a part of any gang activity nor was it carried out with any accomplice.
- [28] Counsel also noted that Mr. Joseph had been on remand since March 2016 – for more than 5-and-a-half years. Mr. Daniels also noted that people on remand at the prison facility in St John’s are usually locked away for 23-hours a day; and that during the height of the COVID-19 pandemic, the one hour recreation period a day was reduced to 15-minutes.
- [29] Counsel also expressed the view that there were no proper rehabilitative programmes in the prison to permit those in custody to be re-tooled and re-trained so that when they re-enter society and be useful, productive persons.
- [30] Mr. Daniels submitted that a fair starting point for any sentence would be 8-years imprisonment.

Victim Impact Statement

- [31] Ms. Glenique Brodie is the deceased’s daughter. She said that at the time of the incident in February 2016 she was aged 15-years. She is now 21-years old. Ms. Brodie is a student of The University of the West Indies.
- [32] Ms. Brodie described the great relationship that she had with her father, now deceased. “Dad was awesome. He was always there for me. He never missed my practices. He took me to ballet, took me to Carnival.”
- [33] On the day Ms. Brodie’s father was injured, she recalled being at home. They lived on the perimeter of the Mac Pond Playing Field. She saw her injured father on the field before he was taken to the hospital. Ms. Brodie said after her father was discharged from the hospital, he could hardly talk or move. “Everybody was sad. I felt it was unfair. He got the bad part of life. Dad can’t be replaced.”
- [34] Ms. Brodie noted that on the day of the incident, her father was on the Mac Pond Playing Field doing community service, digging out the grass even though “it had nothing to do with him” and she did not even use the playing field. “As a good man he decided to go and dig it out. There are good people and there are bad people.”

Submissions on Behalf of the Crown

- [35] Counsel Nelson commended for consideration the decision of Ward J in **DPP v Clevan Lee**, SKBHCR 2018/0010. Crown Counsel thought that the **Clevan Lee** case was useful from two stand points:
- (i) the methodology the Judge utilised in arriving at the final sentence; and
 - (ii) the actual sentence imposed.
- [36] Mr. Nelson also referred to the Eastern Caribbean Supreme Court Sentencing Guidelines. Counsel Nelson noted that the guidelines in relation to manslaughter have not yet entered into operation, but nevertheless he considered them to be highly persuasive.
- [37] Crown Counsel pointed to the aggravating circumstances. He identified these as:
- i. the offence took place in the presence of children; and
 - ii. the deceased was providing a public service at the time of his death.
- [38] Mr. Nelson was of the view that the aggravating factors far outweighed any mitigating factors.
- [39] Counsel Nelson also responded to the submissions made by Mr. Daniel about the conditions at Her Majesty's Prisons – referred to as '1735', being the year the facility was built.
- [40] Counsel referred to **Ashton and Others v Ministry of Justice** [2014] EWHC 1624 (QB), as support for his proposition that although prison conditions may not be pleasant, it was only where there was intense mental and personal suffering that the prison conditions ought to be considered.
- [41] In **Ashton and Others**, the five prisoners were housed at two facilities and they alleged that the sanitation regime subjected them to degrading treatment contrary to article 3 of the European Convention on Human Rights. There was also a claim that there was a breach of the right to private life under article 8 of the Convention. Their claims were just some of the more than 550 claims and their cases were deliberately selected to give guidance to the remaining cases.
- [42] The contention in **Ashton and Others** may not necessarily be similar to that raised by Mr. Daniels in relation to Kenroy Joseph. With regard to the cited case, the vast majority of cells in the English prison have in-cell sanitation; but in some of the older prisons – HMP Albany and HMP Lartin – there are some cells without such sanitation. There was no real complaint about the regime when the prisoners were out of their cells, when they had access to proper toilet facilities. The complaint was about the sanitation regime when they were confined to their cells and in particular for about 13-15 hours every evening/night.
- [43] Davis LJ said:
- “The use of a bucket in a cell as a back up to the otherwise entirely sufficiently sanitary arrangements and facilities available, including its availability as a back up to the Night San

system when the system failed, does not begin in my view arguably to show an infringement of article 3.”

- [44] The situation faced by Mr. Joseph may be considered to be entirely different. What is referred to as a ‘back up’ in the English case, was characterized as the norm at ‘1735’ – the name by which the prison in Antigua and Barbuda is known.

Penalty

- [45] The **Offences Against the Person Act** Cap. 300 of the Laws of Antigua and Barbuda, Revised Edition 1992 specifies the penalty for manslaughter 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 other discretionary punishment as aforesaid.”

- [46] The maximum penalty imposable in Antigua and Barbuda is 35-years imprisonment. In the other Member States of the Eastern Caribbean Supreme Court, the maximum sentence for manslaughter is life imprisonment.

- [47] The Saint Lucia High Court Criminal Case, No: 56 of 2003, **The Queen v Trudy Edward aka Shawnette**, is often cited at sentencing in cases of manslaughter.

- [48] Hariprashad-Charles J in **Trudy Edward** noted at paragraph 7:

“Our Eastern Caribbean Court of Appeal has shown some consistency in the sentencing of accused persons in cases of manslaughter. In cases where provocation or other defences reduces the offence to manslaughter, the benchmark period established is 15-years imprisonment. The benchmark, to my mind gives some guidance on sentencing with the intention of achieving some consistency in the approach to sentencing.”

- [49] Madam Justice Hariprashad-Charles in a footnote to her Judgment listed cases from Saint Lucia and Saint Vincent and the Grenadines from the 1990’s to support the proposition that 15-years imprisonment was the benchmark for manslaughter.

- [50] (Trudy Edward who pleaded guilty to manslaughter, was a teenager at the time of the offence and pregnant, stabbed another female after a brief verbal spat. The other female took out a pair of scissors after she was stabbed but fell to the ground and succumbed to her injury. Hariprashad-Charles J sentenced Edward to 7-years imprisonment).

Clevan Lee

- [51] In **Clevan Lee** the prisoner was in a common law relationship with the deceased. That relationship deteriorated. Mr. Lee made allegations against his partner regarding nude photos he alleged she

took, and an argument ensued. He was of the view that the now deceased lady was reaching for a hammer. He took possession of the hammer and beat her with it. He then went to the kitchen, retrieved a knife and inflicted several stabs. He then circulated photographs of the corpse to a family group chat in another Caribbean country.

- [52] Ward J in **DPP v Clevan Lee** used a starting point of 15-years; but, having considered the aggravating and mitigating circumstances, determined that the appropriate sentence would have been 20 years: “However, taking account of your personal mitigation, credit for guilty plea and time served, you will serve a sentence of 9-years, 8-months and 15-days commencing today.” (Lee spent 2-years, 3-months and 15-days in pre-sentence custody).

Useful Reference

- [53] The facts in **Clevan Lee’s** case are clearly extreme and serious. They are in no way comparable to Kenroy Joseph’s circumstances.
- [54] A case which seems to be in keeping with the facts and circumstances in this matter is **Kenneth Samuel v The Queen** Saint Vincent and the Grenadines Criminal Appeal No: 7 of 2005.
- [55] Kenneth Samuel had a dispute with a co-worker while they were in a storeroom. It was over \$10.00 Mr. Samuel loaned to the now deceased co-worker. There was an argument concerning the repayment and obscene words were used. The co-worker hit Mr. Samuel on the back of his neck with a piece of pipe. Mr. Samuel said that he reacted involuntarily, delivering three blows with a cutlass that he had been holding for work purposes. Mr. Samuel said he did not know if the blows caught the deceased. Mr. Samuel then ran out of the storeroom, drove to a friend and told the friend what he had done. He went to the police and gave them a statement, where he was able to state what he had done.
- [56] The facts in Kenroy Joseph’s case mimic in many respects those in **Kenneth Samuel’s** case, although Mr. Joseph does not allege that he responded “involuntarily” on the day of the incident.
- [57] There was evidence of Mr. Joseph being struck about his body – including his head – by the deceased. Mr. Brodie suffered about five wounds while the deceased in Mr. Samuel’s case received three. The victim in Mr. Joseph’s case survived for weeks and the injuries inflicted were not the immediate cause of death. The victim in Mr. Samuel’s case died the same day as a direct consequence of the injuries.
- [58] It is useful to note the medical evidence that was presented with respect to **Kenneth Samuel** was not present in this case. The psychiatrist report in **Kenneth Samuel** stated:
- “It may be prudent to mention that any sudden blow with a blunt instrument or even by fist, on the back of the neck or head may cause a nervous reflex to make a person confused suddenly and temporarily in that temporary confused state, the person may act totally irrationally and may have temporary amnesia about his act.”

[59] The Court of Appeal Judgment in **Kenneth Samuel**, at paragraph [5] details a part of the psychiatrist's testimony with regard to the effect of a blow to "the autonomic nervous system, which is the system that automatically starts working when a person gets angry and makes him lose control. He said:

"Usually a blow in the back hit the frontal lobe of the brain to the spine and a lot of experiment has proved that frontal lobe area which when it is irritated in any way or disturbed in any way, it causes a lot of violent and irrational acts which cannot be explained."

[60] In **Kenneth Samuel**, the Court of Appeal substituted a sentence of 7-years imprisonment from the date of the Appellant's remand for the 25-years imprisonment that was imposed by the trial Judge.

Sentencing Principles:

[61] In the consolidated case **Desmond Baptiste v The Queen** Saint Vincent and the Grenadines High Court Criminal Appeal No: 8 of 2003, the Eastern Caribbean Supreme Court itemized the four classical principles of sentencing as retribution, deterrence, prevention and rehabilitation.

[62] It was pointed out by Sir Dennis Byron, CJ (as he was then), that the importance of one or the other principle may vary from one case to another and between one offender and another. It was the duty of the sentencer to identify which of the principles applied to the particular case.

[63] In relation to Mr. Joseph, retribution seem to be the most applicable principle. This is where the Court seeks to express society's abhorrence with regard to the offence. It is imposing punishment as a consequence of the prisoner's unlawful conduct.

[64] Deterrence is both general and specific. General in the sense that it seeks to dissuade would be offenders from committing crime. It is said that general deterrence is most effective when the punishment is imposed as close as possible in time to the commission of the offence. Deterrence can be specific to the individual as well. But there is nothing to suggest that Mr. Joseph is likely to reoffend.

[65] Prevention has to with protecting the wider society from people who are recidivists. Offenders who have a high propensity to commit crime need to be kept away from the wider society to the extent permissible in the law. This factor does not apply to Mr. Joseph who is a first time offender.

[66] Rehabilitation is focused on reforming the individual and preparing people for reintegration into society. In some cases, there may be the need for specialist intervention and care of the individual. Mr. Joseph's counsel has complained that the facilities at the prison with regard to rehabilitation are woefully inadequate.

A Note

- [67] Any sentence imposed may never satisfy all the parties concerned.
- [68] Nothing could ever fill the empty space left by the untimely death of a loved one whose life was snatched away.
- [69] A convicted person is expecting the justice system to be merciful and kind.
- [70] In seeking to be fair to all parties, the decisions of courts must be impartial, transparent, coherent and consistent.
- [71] Barrow SC, JA (as he was then) said in **Kenneth Samuel** at paragraph [18]:

“In the application of these sentencing principles, guidelines have been developed to assist a sentencing judge in arriving at a sentence that is deserved, which is to say a sentence that is fair both to the convicted person and to the community, including the family and friends of the victim. A principal guideline is that there must be consistency in sentences. Where the facts of offence are comparable, sentences ought to be comparable, if rationality is to be served.... [A]n offender who had some time to regain self-control after provocation will attract a heavier sentence than the offender who had no time to regain self-control. An offender who delivers one blow in response will deserve a lesser sentence than one who delivers multiple blows. The weapon used and how likely it was to be lethal may be another factor in determining culpability and therefore severity of punishment. Similarly, an offender who has a criminal record will not get as much reduction from the starting sentence as one who has no criminal record and is widely regarded in his community as a good and caring person. These examples are illustrative and not exhaustive.”

Sentencing Guidelines

- [72] The **Eastern Caribbean Supreme Court Sentencing Guidelines** for ‘Manslaughter (by reason of Provocation)’ require that there must first be an assessment of the seriousness of the offence, including the culpability of the offender.
- [73] The consequence of manslaughter is the death of the victim.
- [74] The jury found that Mr. Joseph was guilty of manslaughter by reason provocation. The finders of fact would have determined that there was a sudden, temporary loss of self-control.
- [75] At this stage of the sentencing process, what has to be determined is the intensity of the provocative act or acts and the duration of the provocation. The extent and timing of the response to the provocation must also be borne in mind.
- [76] There was no long-standing dispute between Mr. Joseph and the now deceased Mr. Brodie. The provocative acts on the part of the deceased were relatively brief.

- [77] What is apparent though, is that prior to anything said and done by Mr. Brodie that caused Mr. Joseph to lose his self-control it must be remembered the other circumstances which had an impact on Mr. Joseph. The drought had placed financial strain on him; he sought the intervention of the area representative to get him a job; having been sent to work at the Mac Pond site, he got limited employment and was terminated by his cousin who was the supervisor on the project. It was that cousin to whom Mr. Joseph directed words prior to going on to playing field the afternoon that the incident occurred. It was at this point that Mr. Brodie seemingly injected himself, sparking a verbal exchange. That provocation escalated when Mr. Brodie took the mattock stick and struck Mr. Joseph. Those circumstances amount to a significant degree of provocation. That places the offence on the mid-tier of the three levels of provocation – low, significant and high.
- [78] The **Guidelines** require that the seriousness be considered. The spontaneous use of a weapon that happens to be available is listed in 'Seriousness Level B – Medium –significant degree of provocation'.
- [79] There are also some aspect of 'Seriousness Level C – Lower – high degree of provocation'. Those are that there was some violence from the victim and there was a short period between the provocation and the act which contributed to Mr. Brodie's death.
- [80] According to the grid, Seriousness Level B has a range of 10 to 30 years, with a starting point of 20-years. Level C has a range of from a non-custodial sentence to 15-years with a starting point of 10-years.
- [81] Given the intermingling of Level B and Level C factors as they apply to Mr. Joseph, the most appropriate starting point is at the bottom of Level B, which is 10 years.
- [82] The Crown suggested that there were aggravating factors with regard to the offence. Mr. Nelson said that the offence was committed in the presence of children. The evidence is that there were school children in the vicinity, from the All Saints Secondary School, who went to the playing field for cricket practice. The evidence also indicates that the students were more to the Northern side of the playing field when the incident occurred, while Messers Joseph and Brodie were more on the Southern part.
- [83] The Crown also noted that Mr. Brodie was providing a public service at the time in that he was working voluntarily on the upkeep of the field. It must be noted that during working hours Mr. Brodie was employed as a mason working on the pavilion at the playing field. Mr. Brodie's supervisor on that job, was associated with the cricket team that was practicing on the field the day the altercation occurred. The supervisor had given Mr. Brodie instructions with regard to doing work on the field.
- [84] With regard to mitigating factors, while as the jury found there was an intention to cause serious bodily harm, there was not any obvious intention to kill. This is underscored by the fact that Mr. Brodie survived the attack, was hospitalised, eventually discharged from the hospital and died at his home weeks after the incident from what can be loosely termed a blood clot, which came about because of Mr. Brodie's immobility.

- [85] With regard to the offender, as distinct from the offence, there are no aggravating factors. In his favour, he is of good character, with no criminal past and has lived the first 34-years of his life without transgressing.
- [86] In considering the aggravating and mitigating circumstances, it is apparent that the mitigating circumstances outweigh the aggravating circumstances, but marginally so. In the circumstances, there is no need to adjust the notional starting point.
- [87] Mr. Joseph was convicted following a full trial, so there is no credit to be given for an early guilty plea.
- [88] Mr. Joseph has been in police custody from the day of the incident – from even before Mr. Brodie's death. That time has to be accounted for. One approach would be to calculate the time Mr. Joseph has spent on remand and subtract that from the notional figure. Another approach is to order that his sentence be back-dated to the time of his arrest.
- [89] It has been submitted by Counsel in Court and by judicial officers, that convicted prisoners in Antigua and Barbuda enjoy more liberties at Her Majesty's Prisons than people who are on remand. If that is the case, Mr. Joseph certainly gets no undue advantage by having his sentence back-dated to his date of arrest.

Conclusion

- [90] Mr. Kenroy Joseph is sentenced to a term of ten years imprisonment for causing the death of Lucene Glenex Brodie. Mr. Joseph was arrested and detained by the police in relation to this matter on the 24th February, 2016. He has remained in custody since then. Accordingly his sentence is to commence from the date of his arrest.

Colin Williams
High Court Judge

By the Court

Registrar