

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

SAINT LUCIA

SLUHCRA2008/0007

BETWEEN:

SIMON MARIUS

Appellant

and

THE KING

Respondent

Before:

The Hon. Mr. Mario Michel
The Hon. Mr. Trevor M. Ward
The Hon. Mde. Esco L. Henry

Justice of Appeal
Justice of Appeal
Justice of Appeal

Appearances:

Mr. David Francis for the Appellant
Mr. Linton Robinson for the Respondent

2024: March 15
2025: January 16

Criminal Appeal – Murder – Appeal against sentence – Relevant factors to be taken into account when sentencing a convicted person – Exercise of Discretion - Whether the judge failed to properly exercise his discretion in sentencing insofar as the court failed to consider the possibility of reform and social re-adaptation of the accused person – Evaluation of evidence – Sentencing Methodology -Whether the judge failed to properly evaluate the evidence placed before him insofar as he failed to employ the appropriate or any sentencing methodology prior to imposing a sentence on the appellant -Whether the judge failed to take into account the time spent by the appellant in custody prior to sentence and failed to make any mathematical calculation deducting the said time when he calculated the length of sentence from the date of sentence – Determinate Sentence - Whether the judge failed to address his mind to the possibility of imposing a sentence other than life imprisonment when determining the appropriate sentence to be imposed instead of the death penalty and in so doing improperly exercised his discretion in sentencing the appellant

On 10th July 2002, the appellant was arrested for the murder earlier that day of Pedro Joseph who was, at the time of the murder, the bodyguard of the appellant's former girlfriend, Uzma Ahmed.

Uzma Ahmed was a British national who lived in Saint Lucia and worked as an Optometrist at Vision Express. As part of her work schedule, Ms. Ahmed held a clinic at Vision Express in Vieux Fort every Wednesday. In December 2001, Ms. Ahmed met and befriended the appellant, and their friendship blossomed into a romantic relationship. By March 2002 the appellant was living with Ms. Ahmed at her apartment. But in May 2002, Ms. Ahmed moved out of the apartment and began to live alone, whereupon the appellant started to follow her and more than once he physically abused her, which caused her to make reports to the Gros Islet Police Station against the appellant. Ms. Ahmed also hired a personal bodyguard, Pedro Joseph, who drove Ms. Ahmed to work daily and accompanied her to social events. The appellant however continued to follow her.

On Wednesday 10th July 2002, Ms. Ahmed went to Vieux Fort for her usual work routine at the clinic. Ms. Ahmed was driven to Vieux Fort by Mr. Joseph in a Suzuki Jeep Reg No. 5143. Another Suzuki Jeep drove up alongside Ms. Ahmed's vehicle in the Sandy Beach area in Vieux Fort. Ms. Ahmed noticed that the appellant was the person driving the Suzuki Jeep which drove alongside her vehicle. The appellant then fired several gunshots into Ms. Ahmed's vehicle. Mr. Joseph was hit in the barrage of gunshots and was subsequently pronounced dead at the scene.

The appellant then came out of the vehicle he was driving, pulled Ms. Ahmed out of her vehicle, shot her in her chest area, and also stabbed her about her body. Ms. Ahmed lost consciousness as a result and when she recovered later that day, she was at St. Jude Hospital in Vieux Fort. Ms. Ahmed identified the appellant as the person who shot Mr. Joseph and who shot and stabbed her. The appellant was apprehended on the same day and was subsequently charged for the murder of Pedro Joseph. On 17th July 2008, the appellant was convicted by a jury of the murder of Pedro Joseph and on 24th September 2008 he was sentenced by the trial judge to life imprisonment.

The appellant had appealed against his conviction only but, after the dismissal of his appeal against conviction, he sought and obtained the leave of the Court to appeal against his sentence. On 15th March 2023, the appellant filed submissions in support of his appeal against sentence. The appellant's 4 grounds of appeal against sentence may be summarised as follows: (a) While the trial judge listed the correct considerations and considered the correct authorities that a sentencing judge ought to consider when sentencing a convicted person, the judge failed to properly exercise his discretion in sentencing insofar as he failed to consider the possibility of reform and social re-adaptation of the appellant; (b) The judge failed to properly evaluate the evidence placed before him insofar as he failed to employ the appropriate or any sentencing methodology prior to imposing a sentence on the appellant; (c) The judge failed to take into account the time spent by the appellant in custody prior to sentence and failed to make any mathematical calculation deducting the said time when he calculated the length of sentence from the date of sentence; and (d) The judge failed to address his mind to the possibility of imposing a sentence other than life imprisonment when determining the appropriate sentence to be imposed instead of the death penalty and in so doing improperly exercised his discretion in sentencing the appellant.

Held: allowing the appeal against sentence, setting aside the sentence of life imprisonment imposed by the trial judge, and imposing a sentence of 24 years 10 months and 8 days imprisonment, commencing from the date of the sentencing of the appellant on 24th September 2008;

1. An appeal against sentence is an appeal against the exercise of the sentencing judge's discretion. The Court of Appeal does not alter a sentence which is the subject of an appeal merely because the members of the Court might have passed a different sentence. An appeal court will only interfere with a sentence passed by the trial judge where it is manifestly excessive, or where the wrong principle has been applied in imposing the sentence. The appropriateness of the sentence will be evaluated according to the law and practice in effect at the time the sentence was passed by the judge.

R v Ball [1951] 35 App Rep 164 applied; **Steve Gurrie v The Queen** GDAHCRAP2013/0004 (delivered 5th April 2022, unreported) followed.

2. The sentencing judge was in a position to make a decision on the possibility of reform and social re-adaptation of the appellant in determining the sentence to be imposed on him. Although nothing was stated expressly in the social enquiry report regarding the possibility of reform and social re-adaptation, there was enough in the report to extrapolate that there were real prospects of reform and social re-adaptation by the appellant. Therefore, the judge made an error of law when he failed to take these factors into consideration in arriving at an appropriate sentence, which allows this Court to intervene and re-sentence the appellant.

Mervyn Moise v The Queen SLUHCRA2003/0008 (delivered 15th July 2005, unreported) followed.

3. The primary rule is that in the absence of unusual circumstances a judge should fully credit a prisoner for pre-sentence custody. If the judge seeks to depart from the primary rule, he must state reasons for not granting a full deduction or no deduction at all.

Shonovia Thomas v The Queen BVIHCRA2010/0006 (delivered 27th August 2012, unreported) followed.

4. It is generally accepted that the maximum sentence of imprisonment allowed by statute for a particular offence should be reserved for the worst cases of that offence, and it will be wrong in most cases to start the process of determining the appropriate punishment with the statutory maximum. The sentencing judge is required to consider the facts and circumstances that surround the commission of the offence and on the other hand, the judge must also consider the character and record of the convicted person. Whilst the judge may accord greater importance to the circumstances which relate to the commission of the offence, the relative importance of these two factors may vary according to the overall circumstances of each case.

R v Ball [1951] 35 App Rep 164 applied; **Harry Wilson v The Queen** SVGHCRA2004/0030 (delivered 28th November 2005, unreported) followed.

5. Where the aggravating factors outweigh the mitigating factors, the court will impose a more severe sentence on the convicted person. These mitigating and aggravating factors must be weighed against the principles of sentencing - punishment, deterrence, prevention, reformation and retribution. The sentence imposed on the appellant must reflect his culpability, whilst taking into account the pattern of sentences for offences of a similar nature at or before the time the appellant was sentenced by the trial judge. The sentencing court has to consider the rehabilitation of the appellant, in addition to the applicable legislative requirements and sentencing principles, which include retribution, deterrence and prevention, before imposing a life sentence. The sentencing judge in this case did not make any real reference to the appellant's rehabilitation. The appellant's rehabilitation options should have been explored more thoroughly and issues acknowledged as obstacles to rehabilitation identified and addressed.

R v Sargeant [1974] 60 Cr App Rep 74 applied; **C. Dillon Saul v The Queen** SLUHCRA2008/0020 (delivered 25th January 2011, unreported) considered; **Yanne Drysdale v The Queen** SLUHCRA2017/0003 (oral judgment delivered 8th November 2021) followed.

JUDGMENT

- [1] **MICHEL JA:** This is an appeal against a sentence of life imprisonment imposed on the appellant, Simon Marius, after he was found guilty of the offence of murder. The appellant had previously appealed against his conviction only but, after the dismissal of his appeal against conviction, he sought and obtained the leave of the Court to appeal against his sentence.

Background

- [2] On 10th July 2002, the appellant was arrested for the murder earlier that day of Pedro Joseph who was, at the time of the murder, the bodyguard of the appellant's former girlfriend, Uzma Ahmed.
- [3] Uzma Ahmed was a British national who lived in Saint Lucia and worked as an Optometrist at Vision Express. As part of her work schedule, Ms. Ahmed held a clinic at Vision Express in Vieux Fort every Wednesday. In December 2001, Ms.

Ahmed met and befriended the appellant, and their friendship blossomed into a romantic relationship. By March 2002 the appellant was living with Ms. Ahmed at her apartment. But in May 2002, Ms. Ahmed moved out of the apartment and began to live alone, whereupon the appellant started to follow her and more than once he physically abused her, which caused her to make reports to the Gros Islet Police Station against the appellant. Ms. Ahmed also hired a personal bodyguard, Pedro Joseph, who drove Ms. Ahmed to work daily and accompanied her to social events. The appellant however continued to follow her.

- [4] On Wednesday 10th July 2002, Ms. Ahmed went to Vieux Fort for her usual work routine at the clinic. Ms. Ahmed was driven to Vieux Fort by Mr. Joseph in a Suzuki Jeep Reg No. 5143. Another Suzuki Jeep drove up alongside Ms. Ahmed's vehicle in the Sandy Beach area in Vieux Fort. Ms. Ahmed noticed that the appellant was the person driving the Suzuki Jeep which drove alongside her vehicle. He then fired several gunshots into her vehicle. Mr. Joseph was hit in the barrage of gunshots and was pronounced dead at the scene.
- [5] The appellant then came out of the vehicle he was driving, pulled Ms. Ahmed out of her vehicle, shot her in her chest area, and also stabbed her about her body. Ms. Ahmed lost consciousness as a result and when she recovered later that day, she was at St. Jude Hospital in Vieux Fort. Ms. Ahmed identified the appellant as the person who shot Mr. Joseph and who shot and stabbed her.
- [6] The appellant was apprehended on the same day and was subsequently charged for the offence of murder.
- [7] On 17th July 2008, the appellant was convicted by a jury of the murder of Pedro Joseph and on 24th September 2008 he was sentenced by the trial judge to life imprisonment.

[8] On 17th October 2008, the appellant filed a notice of appeal appealing against his conviction. The appellant's notice of appeal against conviction did not however contain any grounds of appeal. On 25th April 2012, the appellant sought the leave of the Court to argue 7 grounds of appeal against his conviction, which leave was granted. On 11th December 2012, the appeal against conviction was dismissed. On 11th January 2017, the appellant applied to the Court for leave to appeal against his sentence and on 15th December 2017 he was granted leave.

The appeal against sentence

[9] On 15th March 2023, the appellant filed submissions in support of his appeal against sentence, in which submissions one finds the appellant's grounds of appeal against sentence. The appellant's 4 grounds of appeal against sentence may be summarised as follows:

- 1) While the trial judge listed the correct considerations and considered the correct authorities that a sentencing judge out to consider when sentencing a convicted person, the judge failed to properly exercise his discretion in sentencing insofar, as he failed to consider the possibility of reform and social re-adaptation of the accused person. .
- 2) The judge failed to properly evaluate the evidence placed before him insofar as he failed to employ the appropriate or any sentencing methodology prior to imposing a sentence on the appellant.
- 3) The judge failed to take into account the time spent by the appellant in custody prior to sentence and failed to make any mathematical calculation deducting the said time when he calculated the length of sentence from the date of sentence.
- 4) The judge failed to address his mind to the possibility of imposing a sentence other than life imprisonment when determining the appropriate sentence to be imposed instead of the death penalty and in so doing improperly exercised his discretion in sentencing the appellant.

Ground 1

Appellants submissions

[10] Learned counsel for the appellant, Mr. David Francis, submitted that although the court below acknowledged the judgment in **Mervyn Moise v The Queen**¹ and listed the five factors that the court must take into account in sentencing, it failed to consider the prospect of rehabilitation and reform by the appellant. Mr. Francis submitted that **Mervyn Moise** highlights the 5 factors which the court must take into account when sentencing an accused person, which are:

- 1) The nature and gravity of the offense;
- 2) The character and record of the convicted person;
- 3) The factors which might have influenced the conduct that caused the murder;
- 4) The design and execution of the offense; and
- 5) The possibility of reform and social re-adaptation of the convicted person.

Mr. Francis contended that the court failed to properly consider the possibility of reform and social re-adaptation, which resulted in the appellant receiving a sentence that was arbitrary and excessive in all of the circumstances of the case.

[11] Mr. Francis further submitted that the transcript of proceedings, dated 24th September 2008, does not reveal that the judge considered the issue of the possibility of reform or social re-adaptation of the appellant, although the judge acknowledged at page 15 line 16 that 'the report was silent as to prospects of rehabilitation of the accused.' Mr. Francis submitted that there was in fact evidence available to the court on which it could have made a determination with respect to the appellant's prospect of reform and re-adaptation into society.

[12] Further, Mr. Francis submitted that had the court considered the possibility of reform and social re-adaptation of the appellant, it would have come to the conclusion that a determinate sentence would have been appropriate in all the circumstances of the case.

¹ SLUHCRA2003/0008 (delivered 15th July 2005, unreported).

Respondents Submissions

- [13] The Crown conceded that the learned judge in sentencing the appellant failed to address his mind to the possibility of reform and social re-adaptation of the appellant. The Crown also acknowledged that the court erred in principle by failing to consider relevant factors and considerations that were before it when the appellant was sentenced. The Crown agreed that the court was seised of the fact of the appellant's good character, was apprised of the secondary and tertiary education attained by the appellant, the fact that the appellant was gainfully employed up to the time of the incident, and that he had been an active member of the Cadet Corps. Learned counsel for the respondent, Mr. Linton Robinson, therefore agreed that there was information available to the trial judge from which he could have made his own assessment or opinion on the prospects of rehabilitation of the appellant.

Ground 2

Appellant's submissions

- [14] In his written submissions in support of his second ground of appeal, the appellant sought to rely on the judgment of the Court of Appeal of Trinidad and Tobago in the case of **Lauren Aguilera v The State**². The appellant asserted that the judge did not engage in any sentencing methodology and submitted that the guidance given by the Court of Appeal of Trinidad and Tobago at paragraph 24 in **Aguillera** should have been employed by the trial judge. The appellant submitted that the failure by the trial judge to establish the appropriate starting point and to make any upward or downward adjustments for the mitigating and aggravating factors of the offender and the offence resulted in the court imposing a sentence which was arbitrary and disproportionate in the circumstances.

Respondent's Submissions

- [15] Although in the written submissions it appeared that the Crown had conceded all of the appellant's 4 grounds of appeal, in his oral submissions on behalf of the Crown

² TT 2016 CA 38.

Mr. Robinson stated that grounds 2 and 3 were not conceded. With respect to ground 2, Mr. Robinson argued that the learning in **Aguillera** could not have been applied by the trial judge because the appellant was sentenced in 2008, whereas the Aguillera case was decided in 2016. He submitted that the principles set out in **Mervyn Moise** were the relevant factors for consideration by the trial judge at the time when the appellant was sentenced.

Ground 3

Appellant's submissions

[16] Learned Counsel for the appellant posited that the trial judge failed to consider the time spent by the appellant in custody prior to the sentence being imposed on him and thus erred in the exercise of his discretion. Mr. Francis relied on **Callachand & another v The State of Mauritius**³ where the Privy Council indicated that “any time spent in custody prior to sentencing should be taken fully into account by means of an arithmetic deduction when assessing the sentence that is to be served”.

[17] Mr. Francis also submitted on behalf of the appellant that even if the Court found that it did not wish to make any arithmetical deductions, it had a duty to the appellant to indicate what was done with this time or the reasons for not making the mathematical deductions.

Respondent's Submissions

[18] The Crown submitted that having arrived at a sentence of life imprisonment, it was of no moment for the trial judge to make any mathematical deductions since there was no determinate sentence pronounced or no determinate starting point for the sentence. Learned Counsel for the Crown argued that the court was not therefore able to make any mathematical calculations, having imposed a sentence of life imprisonment. He argued that **Callachand** only applies where a deduction is a possibility and so it could not apply in this case due to the determination made by the trial judge to impose a sentence of life imprisonment.

³ [2008] UKPC 49.

Ground 4

Appellant's submissions

- [19] With respect to ground 4, the appellant submitted that the court failed to address its mind to the possibility of imposing a sentence other than life imprisonment when determining the appropriate sentence to be imposed instead of the death penalty, and in so doing the trial judge improperly exercised his discretion in sentencing the appellant. Mr. Francis argued that whilst the court gave reasons for not passing the death sentence, there were no reasons given for the determination that life imprisonment was the appropriate sentence. He asserted that the absence of reasons for the court's decision placed the appellant in a position where he was unable to determine whether the trial judge had taken all relevant factors into consideration when imposing a sentence on him and that, therefore, the sentence was arbitrary.

Respondents Submissions

- [20] The Crown conceded ground 4 and submitted that the trial judge, after having decided that the Crown had not met the requisite criminal standard for the passing of the death penalty, simply went on to declare that the appellant is sentenced to life imprisonment. Learned counsel for the Crown noted that the transcript revealed that the judge was of the view that the imposition of life imprisonment was automatic and there was no consideration or discussion on any determinate term. Consequently, Mr. Robinson agreed with the appellant that the judge erred in this regard.

Discussion

Appellate Review

- [21] An appeal against sentence is an appeal against the exercise of the sentencing judge's discretion. In the case of **R v Ball**⁴ Hilbery J, in stating the principles which

⁴ (1951) 35 Cr App Rep 164.

must guide an appellate court in deciding what is the right sentence to pass on a convict, said:

“In the first place, this Court does not alter a sentence which is the subject of an appeal merely because the members of the Court might have passed a different sentence. The trial Judge has seen the prisoner and heard his history and any witnesses to character he may have chosen to call. It is only when a sentence appears to err in principle that this Court will alter it. If a sentence is excessive or inadequate to such an extent as to satisfy this Court that when it was passed there was a failure to apply the right principles, then this Court will intervene.”

- [22] Baptiste JA in giving the reasons of the Court in **Steve Gurrie v The Queen**⁵ aptly stated at paragraph 4 that :

“...Appeals against sentencing to the Court of Appeal are not conducted as exercises in re-hearing ab initio. It is not the function of this Court on an appeal against sentence, to conduct a sentencing hearing. On appeal, a sentence is examined to see whether there was an error in law or in principle or whether it was manifestly excessive, and those questions are determined according to the law and practice obtaining at the time the sentence was passed by the judge.”

- [23] The jurisprudence is clear that an appeal court will only interfere with a sentence passed by the trial judge where it is manifestly excessive, or where the wrong principle has been applied in imposing the sentence.⁶ It should also be clear that when an offender appeals against an allegedly excessive sentence the court concerns itself almost exclusively with circumstances presented to the trial judge.⁷

- [24] In the case of **R v Radich**⁸, the Court stated that:

“One of the main purposes of punishment is to protect the public from the commission of such crimes by making it clear to the offender and to other persons with similar impulses that, if they yield to them, they will meet with severe punishment. If a court is weakly merciful and does not impose a sentence commensurate with the seriousness of the crime, it fails in its duty to see that the sentences are such as to operate as a powerful factor to prevent the commission of such offences. On the other hand, justice and humanity both require that the previous character and conduct and

⁵ GDAHCRAP2013/0004 (delivered 5th April 2022, unreported).

⁶ See Vivekanand Singh, Hazrath Hussain, Hafeez Hussain and Tola Persaud v The State, (1999) 59 WIR 245, George Thomas v The Queen.

⁷ DPP V Karazisis [2010] VSCA 350.

⁸ [1954] NZLR 86.

probable future life and conduct of the individual offender, and the effect of the sentence on these, should also be given the most careful consideration, although this factor is necessarily subsidiary to the main considerations that determine the appropriate amount of punishment.”

- [25] These principles are still relevant and sound in law and are applicable to the case at bar. It must be borne in mind that this Court is being asked to exercise a discretion upon a discretion already exercised by the trial Judge.⁹ Therefore, in assessing the issues raised by the appellant, I must therefore look at the facts and circumstances that were before the trial court at the time of sentencing.

Possibility of reform

- [26] The trial judge was in possession of the social inquiry report dated 26th July 2008 which gave a comprehensive report about the appellant, including his home and family life, education, employment history and present state as of the date of the report. The report, however, did not expressly state the probation officer’s assessment of the appellant’s prospects for rehabilitation and reform. In the sentencing judgment dated 24th September 2008, the judge referenced that the sentencing court should approach its task in the clear enunciation of Justice of Appeal Rawlins as he then was in **Mervyn Moise v The Queen**. The judge also referenced that the probation report was silent as to the prospects of rehabilitation of the accused.¹⁰

- [27] The Court in **Mervyn Moise** stated at paragraph 18 and 19 the following, which will guide this Court in the determination of the issues in this appeal:

“[18] It is a mandatory requirement in murder cases for a Judge to take into account the personal and individual circumstances of the convicted person. The Judge must also take into account the nature and gravity of the offence; the character and record of the convicted person; the factors that might have influenced the conduct that caused the murder; the design and execution of the offence, and the possibility of reform and social re-adaptation of the convicted person. ...

⁹ Nero v State (2019) 98 WIR 373.

¹⁰ See page 16 lines 16 to 17 of the sentencing judgment in the record of appeal.

[19] In summary, the sentencing Judge is required to consider, fully, two fundamental factors. On the one hand, the Judge must consider the facts and circumstances that surround the commission of the offence. On the other hand, the Judge must consider the character and record of the convicted person. The Judge may accord greater importance to the circumstances, which relate to the commission of the offence. However, the relative importance of these two factors may vary according to the overall circumstances of each case.”

[28] Therefore, I am constrained to agree with learned counsel for the appellant and to find that the judge was in a position to make a decision on the possibility of reform and social re-adaptation of the appellant in determining the sentence to be imposed on him. Although nothing was stated expressly in the social enquiry report regarding the possibility of reform and social re-adaptation, there was enough in the report to extrapolate that there were real prospects of reform and social re-adaptation by the appellant. As a result, I find that the judge made an error of law when he failed to take these factors into consideration in arriving at an appropriate sentence, which allows this Court to intervene and re-sentence the appellant.

Time spent on remand

[29] The Court of Appeal in **Shonovia Thomas v The Queen**¹¹ summarised the principles relevant to time spent on remand and highlighted the case law on this issue at paragraphs 69 to 70 that:

“[69] The position regarding time spent on remand has been addressed by the Privy Council in *Callachand & Anor v State of Mauritius (Mauritius)* and the Caribbean Court of Justice in *Romeo Da Costa Hall v The Queen*. Useful guidance has been given in these cases. The primary rule is that in the absence of unusual circumstances a judge should fully credit a prisoner for pre-sentence custody. If the judge seeks to depart from the primary rule, he must state reasons for not granting a full deduction or no deduction at all. In *Callachand*, the Board stated at paragraph 9:

‘It seems to be clear too that any time spent in custody prior to sentencing should be taken fully into account, not simply by means of a form of words but by means of an

¹¹ BVIHCRA2010/0006 (delivered 27th August, 2012, unreported).

arithmetical deduction when assessing the length of the sentence that is to be served from the date of sentencing.'

[70] In **Romeo Da Costa**, the Caribbean Court of Justice recognised a residual discretion in a sentencing judge not to apply the primary rule. Examples given were: (1) where the defendant has deliberately contrived to enlarge the amount of time spent on remand, (2) where the defendant is or was on remand for some other offence unconnected with the one for which he is being sentenced, (3) where the period of pre-sentence custody is less than a day or the post-conviction sentence is less than 2 or 3 days, (4) where the defendant was serving a term of imprisonment during the whole or part of the period spent on remand and (5) generally where the same period of remand in custody would be credited to more than one offence."

[30] Looking at the grounds of appeal on the whole and considering the issues of prospects of rehabilitation and reform and the deduction of time spent on remand, I am of the view that the appeal against the sentence of life imprisonment should be allowed and a determinate term should be imposed. I will now consider the appropriate sentence which should be imposed as a result.

Appropriate sentence

[31] The appellant argued that the appropriate starting point for a sentence based on the facts of this case should be 40 years, with a range of 30-50 years. The respondent submitted that the starting point should be 40 years, and because there are many aggravating factors in relation to the offence which outweigh the mitigating factors in relation to the appellant, the sentence should be at the higher end of the range, that is 50 years. The respondent submitted that there were no mitigating factors for the offence; however, given the aggravating factors such as the use of a firearm, a degree of premeditation and planning, the potential for another person's death, the fact that the offence was committed in public and that it was an unprovoked act involving a history of violence against Ms. Ahmed, who was in the vehicle when the deceased was killed and who was shot and stabbed at the same time, the sentence should be on the higher end of the range. Furthermore, by the time the trial took place, the appellant had 2 convictions of escaping lawful custody and damage to property.

- [32] Counsel for the respondent conceded, however, that there is a good prospect of rehabilitation by the appellant who, based on reports by the prison authority, was recommended for parole. The parole hearing however has never taken place.
- [33] The Deputy Director of Corrections of the Bordelais Correctional Facility, Mr. Leonard Terrance, in a report dated 2nd April 2024 in answer to a request made by this Court, indicated that the appellant was remanded on 18th July 2002. Mr. Terrance stated that initially the appellant was housed at the maximum-security unit and escaped lawful custody on 31st December 2002. Upon recapture, he was housed again in the maximum-security unit at the Bordelais Correctional Facility, but he has made significant improvement in his conduct over the past eight years and has participated in several behaviour modification programs, such as anger management, meditation and Alcoholics Anonymous. After a reassessment of his behaviour, a decision was made to reclassify the appellant and currently he resides at the Alpha Unit, which is designed for inmates who pose less of a challenge to manage.
- [34] Mr. Terrance's report also indicated that the appellant was committed to his personal development, he has been selected to attend the work programme outside the facility, enrolled in the education program, and exhibits a high level of discipline. Mr. Terrance was of the view that the appellant has derived the maximum benefits which could result from incarceration.
- [35] Hilbery J. in **R v Ball**, in examining the aim of sentencing and punishment, stated:
"In deciding the appropriate sentence, a Court should always be guided by certain considerations. The first and foremost is the public interest. The criminal law is publicly enforced, not only with the object of punishing crime, but also in the hope of preventing it. A proper sentence, passed in public, serves the public interest in two ways. It may deter others who might be tempted to try crime Such a sentence may also deter the particular criminal from committing a crime again, or induce him to turn from a criminal to an honest life. The public interest is indeed served, and best served, if the offender is induced to turn from criminal ways to honest living. Our law

does not, therefore, fix the sentence for a particular crime, but fixes a maximum sentence and leaves it to the Court to decide what is, within that maximum, the appropriate sentence for each criminal in the particular circumstances of each case. Not only in regard to each crime, but in regard to each criminal, the Court has the right and the duty to decide whether to be lenient or severe.”

[36] It is generally accepted that the maximum sentence of imprisonment allowed by statute for a particular offence should be reserved for the worst cases of that offence, and I think it will be wrong in most cases to start the process of determining the appropriate punishment with the statutory maximum.¹²

[37] In considering the appropriate sentence to impose on the appellant, I adopt the statements made by Rawlins JA in **Harry Wilson v The Queen**¹³:

“[18] In summary, the sentencing Judge is required to consider, fully, two fundamental factors. On the one hand, the Judge must consider the facts and circumstances that surround the commission of the offence. On the other hand, the Judge must consider the character and record of the convicted person. The Judge may accord greater importance to the circumstances, which relate to the commission of the offence. However, the relative importance of these two factors may vary according to the overall circumstances of each case.”

Mitigating and Aggravating Factors

[38] Where the aggravating factors outweigh the mitigating factors, the court will impose a more severe sentence on the convicted person. The aggravating factors of the offence in this case include the use of a firearm to shoot the deceased, the degree of premeditation and planning, with the appellant following Ms. Ahmed and Mr. Joseph from Castries to Vieux Fort, the fact that Ms. Ahmed could have been killed in the attack, the commission of the offence in public, and that it was an unprovoked act involving a history of violence against Ms. Ahmed.

[39] The appellant submitted that there were no aggravating factors of the offender, but

¹² R v Trimmingham [2010] 1 LRC 205

¹³ SVGHCRA2004/0030 (delivered 28th November 2005, unreported).

that the mitigating factors included – (i) his previous good character, (ii) the fact that he was suffering from what appeared to be a mental disability (a depressive state) at or around the time of the commission of the offence, and (iii) his good prospects for rehabilitation.

[40] These mitigating and aggravating factors must be weighed against the principles of sentencing, as set out in **R v Sergeant**,¹⁴ of punishment, deterrence, prevention, reformation and retribution. I am mindful that the sentence imposed on the appellant must reflect his culpability, whilst taking into account the pattern of sentences for offences of a similar nature at or before the time the appellant was sentenced by the trial judge. I must also bear in mind the mitigating factors which may reduce the defendant's culpability and overall sentence. All things considered, I am of the view that in this case a determinate term should be imposed, taking into account the issues as highlighted above.

[41] In **C. Dillon Saul v The Queen**¹⁵, the appellant was convicted of murder and sentenced to 30 years imprisonment with effect from the date of his arrest. The prosecution's case was that the appellant attacked his deceased cousin while she was taking her 6 year old son to school. He struck her with a piece of pipe on her head and stabbed her several times with a knife after she fell to the ground. At the sentencing hearing, the trial judge had regard to a social inquiry report, a psychiatric report, and a plea in mitigation by the appellant's counsel. The plea in mitigation disclosed that the appellant was remorseful, he had a problem with alcohol and drugs, and was a skilled 32 year old man who had an ongoing rift with his family (including the deceased) concerning his occupation of their deceased great grandmother's home. The appellant appealed his sentence on the ground that it was excessive, having regard to the facts and the trial judge's failure to take into account 2 of the mitigating factors. In dismissing the appeal and affirming the sentence of 30 years, the Court held that (i) allowance for mitigation is not considered to be an

¹⁴ (1974) 60 Cr App Rep 74, UK CA.

¹⁵ SLUHCRA2008/0020 (delivered 25th January 2011, unreported)

entitlement of the offender, the more serious the crime the less weight that would be given to remorse; (ii) the sentence of 30 years imposed by the trial judge reflects that the judge considered that the mitigating factors were outweighed by the aggravating factors and that a deterrent sentence was required in all circumstances; (iii) the court will vary a sentence of imprisonment only where it considers that the sentencer failed to apply the correct principles in reaching his decision on sentence; (v) the court does not consider the sentence disproportionate to the offence or wrong in principle and the sentence of 30 years falls within the appropriate range of sentences for that kind of murder.

[42] In **Yanne Drysdale v The Queen**¹⁶ this Court considered an appeal against sentence where the appellant, Yanne Drysdale, was convicted of the offence of murder of his estranged girlfriend and sentenced to life imprisonment. The main ground of appeal was that the sentencing judge in exercising his discretion in sentencing the appellant failed to take into account all of the relevant circumstances in relation to the offence and the offender, which resulted in the sentence imposed being excessive and arbitrary. The Court agreed that the sentence of life imprisonment imposed on the appellant should be set aside since the judge in the court below failed to apply the principles of sentencing. The Court considered the aggravating factors of the offence, which included the prevalence of the offence, the premeditation involved, the fact that the deceased received multiple stab wounds, another person was also injured in the attack, and that the incident occurred in a public place. The Court considered that there were no mitigating factors of the offence and, in the circumstances, was of the view that the starting point should be 35 years.

[43] In terms of aggravating factors of the offender, the Court considered that the appellant was abusive to the deceased. In terms of mitigating factors of the offender, the Court took into account the fact that the appellant had no previous convictions, the fact that the court below accepted that he was remorseful, that he was gainfully

¹⁶ SLUHCRA2017/0003 (oral judgment delivered 8th November 2021)

employed at the time of the incident and that based on the probation report there was a good prospect of rehabilitation. The Court found that in those circumstances the mitigating factors of the offender outweighed the aggravating factors and accordingly reduced the sentence by 5 years, which brought the sentence to 30 years. The time spent on remand, which was rounded to 2 years and 5 months, was also deducted from the sentence of 30 years, which brought the sentence to a period of 27 years and 7 months from the date of sentence.

- [44] The sentencing court has to consider the rehabilitation of the appellant, in addition to the applicable legislative requirements and sentencing principles, which include retribution, deterrence, and prevention, before imposing a life sentence. Regrettably, the sentencing judge in this particular case had not made any meaningful reference to the appellant's rehabilitation. The appellant's rehabilitation options should have been explored more thoroughly, and issues acknowledged as obstacles to rehabilitation identified and addressed.

Conclusion

- [45] Considering the facts and circumstances surrounding the commission of the offence in this case, I am of the view that the starting point for the sentencing of the appellant should be 35 years, as in **Yanne Drysdale**, with a reduction of 4 years to take account of the prospects of rehabilitation of the appellant, bringing the notional sentence to 31 years, from which must be deducted time spent by the appellant on remand, from his arrest on 10th July 2002 to his sentencing on 24th September 2008 (6 years, 2 months, 14 days). However, the period from 31st December 2002 to 22nd January 2003 (22 days) when the appellant was an escapee from lawful custody is not to be included in the calculation of the time spent by the appellant on remand. The total remand time with which the appellant will be credited will therefore be 6 years, 1 month and 23 days, yielding a sentence of 24 years 10 months and 8 days imprisonment.
- [46] I will accordingly allow the appeal against sentence, set aside the sentence of life imprisonment imposed by the trial judge, and impose a sentence of 24 years 10

months and 8 days imprisonment, commencing from the date of the sentencing of the appellant on 24th September 2008.

I concur.
Hon. Mr. Trevor M. Ward
Justice of Appeal

I concur.
Hon. Mde. Esco L. Henry
Justice of Appeal

By the Court

Chief Registrar