

SAINT LUCIA

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

CASE NO. SLUCRD2020/0376

THE KING

vs.

NAIM AKIM DENVER MORILLE

Defendant

Before:

The Hon. Mde. V. Georgis Taylor-Alexander

High Court Judge

Appearances:

Mr. Jeannöt-Michel Walters for the Defendant

Mr. Linton Robinson for the Crown

The Defendant present via zoom from the Bordelais Correctional Facility

2024: November 25;

JUDGMENT ON SENTENCING

- [1] **TAYLOR-ALEXANDER J:** This matter came on for the Sentencing of the Defendant for Manslaughter by Diminished Responsibility on 3rd May 2024. The Defendant is incarcerated at the Bordelais Correctional Facility and has been for the last four (4) years.

Brief History

- [2] The deceased was the Defendant's uncle. The two (2) shared a friendly relationship prior to the 22nd of July 2020. On the 22nd of July 2020, Liza Emmanuel, the niece of the deceased and cousin of the Defendant overheard a commotion between the deceased and the Defendant. She overheard the Defendant threatening the deceased and saw him "playing a cutlass in the deceased's face". The deceased was discovered motionless on the floor near his bed in a pool of blood on Friday, the 24th of July 2020. His cause of death was reported by the pathologist to be exsanguination, secondary to multiple chop wounds to the head. The Defendant on arrest admitted to attacking his uncle while his uncle lay asleep in his bed in his secured dwelling, by striking him multiple times to the face and neck with a cutlass and a hammer until his uncle's jaw started to fall off. He admitted to scoping his uncle out, as if he, the Defendant "was a lion, and he (his uncle) was a gazelle", and that he killed his uncle in order to stand his ground.
- [3] At arraignment on an indictment issued for Murder, and following a finding by the Jury that the Defendant was fit to plead, the Defendant offered a plea of guilty to manslaughter on grounds of diminished responsibility, which plea was accepted by the Crown.
- [4] In **R v Valerie Witter**¹ the Court of Appeal of Jamaica issued the following guideline for accepting a plea of Manslaughter on grounds of Diminished Responsibility. The Court said:

*"It seems from the previous experience of the court that there appears to be some misunderstanding as to the nature or manner of the proceedings which should take place where the defence is seeking to enter a plea of guilty on the ground of diminished responsibility to a charge of murder. It seems to be uncertain as to whether the evidence tendered before the court should be tendered by the defence or by the prosecution but one thing is clear and that is that medical evidence must be tendered to the court, it was impossible for a person accused of murder to enter a plea of guilty of manslaughter on the ground of diminished responsibility but since the decision in the case of **R. v. Maurice George Cox**² it is perfectly in order for the defence to invite the prosecution to accept such a plea and for the prosecution, with the permission of the court, to accept the invitation and I quote from a passage of the judgment of Lord Justice Winn who presided over the Court of Appeal in that case:*

¹ JLR 1261

² (1968) 52 Cr App R 130.

“This is an appeal by leave of the single judge against a sentence which was passed upon the appellant when he had been convicted of manslaughter on the ground of diminished responsibility, having been indicted for murder. That occurred on March 20, 1967, the victim who was killed, having been his own wife and her death having occurred on the evening of January 27. It is, the court thinks, worthy of remark that from the very outset of the trial it was quite clear not only that the accused was prepared to plead guilty to manslaughter on the grounds of diminished responsibility, but that the medical evidence available, in the possession of the prosecution as well as the defence, showed perfectly plainly that that plea was a plea which it would have been proper to accept. However, the matter proceeded to be tried by the jury, as a result of which time and money was spent and the appellant was no doubt kept in some anxiety and uncertainty whilst the trial went on. The court desires to say yet again, not at all for the first time in the experience of every member of the court, that there are cases where on an indictment for murder, it is perfectly proper, where the medical evidence is plainly to this effect, to treat the case as one of substantially diminished responsibility and accept, if it be tendered, a plea of manslaughter, on that ground, and avoid a trial for murder” “

[5] I rely with approval on this guideline which is not inconsistent with Section 90 of the Criminal Code of St. Lucia which provides:

- “(1) If a person kills or is a party to a killing of another person, he or she shall not be convicted of murder if he or she was suffering from such mental disorder (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his or her mental responsibility for his or her acts in doing or being a party to the killing.*
- (2) On a charge of murder, it is for the defence to prove that the person charged by virtue of this section not liable to be convicted of murder.*
- (3) A person who, but for this section would be liable to be convicted of murder, is liable to be convicted of manslaughter.”*

[6] The Defence relied on the Defendant’s psychiatric record from 2015 and the many psychiatric reports of schizophrenia issued for the Defendant, the psychological report and on the facts and

circumstances of the case including the Defendant's bizarre behaviour on the days leading up to the killing, which the Crown accepted.

- [7] Upon reviewing the facts and circumstances including the Defendant's statement to the police which was read into the record at sentencing and the various reports from the psychiatrist and psychologist, I am satisfied that the Defendant suffered from an abnormality of the mind, which substantially impaired his mental responsibility³, and more than likely that existed at the time of the killing.

Psychiatric Reports

- [8] The Defendant was first presented at the Saint Lucia National Mental Wellness Centre (SLNMWC) in 2015 and thereafter, has had five (5) further admissions most of which were for violent behaviour. Five (5) assessments were conducted of the Defendant during his incarceration at the Bordelais Correctional Facility. The reports confirm that the Defendant suffers with schizophrenia multiple episodes; alcohol use disorder in remission in a controlled environment; cannabis use disorder which is severe.
- [9] The following summarises the five (5) psychiatric reports on the case file, obtained post offence and while the Defendant was incarcerated: -
- (i) In Sept 2020 – the Defendant was diagnosed with schizophrenia and determined to be unfit to plead. He was ordered to regularly take prescribed medication.
 - (ii) In March 2021 – he was determined to be fit to plead with multiple episodes of schizophrenia in remission.
 - (iii) In December 2022 – he was determined to be fit to plead and asymptomatic but that he continued to use marijuana with a risk of relapse.
 - (iv) In September 2023 – he was determined to be fit to plead and asymptomatic but continuing to use marijuana with a risk of relapse.
 - (v) In April 2023 – he was determined to be fit to plead and asymptomatic with developed intellectual insight into his illness.
 - (vi) On November 11, 2024 – he was determined to be fit to plead and asymptomatic, but opposed to counselling.

³ Byrne [1960] 2 QB 396, per Lord Parker CJ at p. 404.

The Psychological Report

- [10] This report reflects that the Defendant has a strong history of violence and aggression. He was beaten continuously and brutally as a child. This did not help his mental functioning. In her engagement of him, the Psychologist concluded that the Defendant lacks remorse and empathy. The psychologist opined that there is a high likelihood that the Defendant will engage in future violence that will result in serious physical harm. She noted that the Defendant has poor stress management skills and coping skills, for which the psychologist recommended individual therapy to deal with lingering childhood trauma and to teach the Defendant to develop coping skills.
- [11] The Defendant has remained compliant with medication over the last four (4) years that he has been incarcerated at the Bordelais Correctional Facility commencing from the 25th of July 2020.

The Pre-Sentence Report

- [12] The report reflects that the Defendant is now thirty-two (32) years old and is of previous good character. He was raised by his mom and stepfather in a community where his entire family lived in the surrounding houses. The report reflects that the Defendant had family support which has become strained since taking the life of his uncle. The Defendant has a history of mental illness which was first diagnosed in 2015. The mental illness is exacerbated by marijuana use. The community reports are that the Defendant is a quiet person who was non-violent but appears to suffer from mental illness. The Defendant attended a secondary school and has had some tertiary skills training but he failed to complete the program. The risk factors associated with the Defendant are his mental illness, and his use of marijuana, hash and alcohol.

Victim Impact

- [13] The parents of the deceased who are also the grandparents of the Defendant lament the way their son was taken from them. The deceased's father questions whether the Defendant really suffers from mental illness, as he says, the Defendant meticulously cleaned up the evidence of his crime. The deceased's mother who had given the Defendant a place to stay, and who had taken him to the Wellness Centre (SLNMWC) in 2015 when he was first diagnosed with mental illness, says the Defendant is no longer welcomed in her home or the community. The sisters of the deceased say that the Defendant has an obsession with money and that it is this that led him to bludgeon their brother. They say that their brother would usually oblige the Defendant and give him money, but on that occasion, their brother refused to give the Defendant money. They remain distraught and their family remains divided by this incident.

SENTENCE

- [14] A person convicted of Manslaughter under the Criminal Code of St. Lucia is liable to imprisonment for life. Section 1123 (1) provides for the exercise of a discretion to allow for a sentence of an offender to a term less than that prescribed by the Code for an offence. There are no published guidelines in the Eastern Caribbean Supreme Court (ECSC) for Manslaughter by Diminished Responsibility, to assist in the exercise of this discretion.
- [15] The UK has issued sentencing guidelines under its legislative regime for Diminished Responsibility Manslaughter. In **R. v. Chambers**⁴, the Court of Appeal of England offered this as the Court's approach:
- "In diminished responsibility cases there are various courses open to a judge. His choice of the right course will depend on the state of the evidence and the material before him. If the psychiatric reports recommend and justify it, and there are no contrary indications, he will make a hospital order. Where a hospital order is not recommended, or is not appropriate, and the defendant constitutes a danger to the public for an unpredictable period of time, the right sentence, will, in all probability, be one of life imprisonment."*
- [16] The approach of the court is therefore to consider all of the circumstances of the case, including whether the Defendant is a threat and how long he may remain so. The Defendant's mental disorder does not absolve him of a sentence of imprisonment. The evidence of the psychiatrist Dr. Julius Gilliard, is that the Defendant's schizophrenia on regular and continuous medication can remain in remission and as such he can be functional and any threat he poses can be mitigated on a regular medication regime. The Defendant lacks the family or other support to ensure he adheres to a regular regime.
- [17] In **Edward Toussaint v. R**⁵, the Court of Appeal of the Eastern Caribbean Supreme Court, substituted a conviction with one for manslaughter by way of diminished responsibility and imposed a sentence of twenty-five (25) years on the Defendant.
- [18] In the **Queen v Mitchel Nicholas** SKBHCR2022/0004 where a psychiatric report was obtained shortly after the incident, and the Defendant was reflected to have a history of mental illness, a starting point of twenty (20) years was used, because there was no evidence of a weapon being used in the commission of the offence.

⁴ (1983) 5 Cr. App. R. (s) 190

⁵ Criminal Appeal No. 5 of 2000

[19] I have used the UK Guideline for Diminished Responsibility and relied on the facts and circumstances of this case, in particular that the Defendant broke into the home of his uncle and bludgeoned him while he slept. It is acknowledged that the Defendant was suffering from schizophrenia, however, his ability to exercise self-control was impeded by his use of drugs and alcohol. This is a level high responsibility due to his use of drugs and alcohol. A starting point of twenty-six (26) years with a range of fifteen (15) years to forty (40) years is appropriate.

[20] **Aggravating factors of the offence**

- There was significant planning and premeditation albeit that it arose from a delusional thought process.
- There was significant physical suffering of the deceased to the extent where his jaw was almost dismembered from his face.
- Two (2) weapons, a blunt weapon and a bladed weapon were used to inflict the injury.
- The Defendant attempted to conceal and cover up his offence.

[21] **Mitigating factors of the offence**

There are none. The severity of the event elevates its significance making it impossible to view it as an isolated event.

[22] For each of the aggravating features, I have added a year resulting in an upward adjustment of four (4) years, taking the starting point from twenty-six (26) years to thirty (30) years.

[23] **Aggravating factors of the offender**

- There are none.

[24] **Mitigating factors of the offender**

- The Defendant is of previous good character, for which he benefits from a downward adjustment of one (1) year.
- Although the report of the psychologist is that the Defendant lacks remorse, during the sentencing hearing the Defendant expressed remorse, and for what it is worth, he benefits from a downward adjustment of one (1) year.

After cancelling out, the Defendant's sentence stands at twenty-eight (28) years. (the full sentence)

Disposition

- [25] The Defendant is detained at the court's pleasure for a period of twenty-eight (28) years. (the full sentence)
- [26] **The Early Guilty Plea:** Although the Defendant entered a plea of guilty at the first available opportunity, the nature of this sentence, negates discount for the early guilty plea. However, after completing a period of eighteen (18) years, the Defendant will undergo psychiatric and psychological assessments to determine his ability to function outside the confines of the Bordelais Correctional Facility, or whether he can transition to the Saint Lucia National Mental Wellness Centre (SLNMWC). This decision will be based on expert evaluations and the Defendant's compliance with medication. If he is unfit for release, he will remain at the Bordelais Correctional Facility for the full sentence. If deemed suitable, the Defendant may transition to the SLNMWC for further therapy for a period not exceeding the full sentence aiming for eventual reintegration into society.

ANCILLARY ORDERS

- [27] The Defendant is to undertake Anger Replacement Therapy during the next six (6) months in so far as the same is available at the Bordelais Correctional Facility.
- [28] The Defendant is to be assigned to an appropriate work program at the Bordelais Correctional Facility in so far as he meets the criteria for this assignment.
- [29] In so far as it is available at the Bordelais Correctional Facility the Defendant is to be offered individual therapy to deal with lingering childhood trauma and to teach the Defendant coping skills.
- [30] The Defendant is to undertake Drug and Alcohol Rehabilitation during his incarceration in so far as the same is available at the Bordelais Correctional Facility.

Justice V. Georgis Taylor-Alexander
High Court Judge

BY THE COURT

REGISTRAR