

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

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

CASE NUMBER: ANUHCR2012/0066

BETWEEN:

THE KING

and

**ISAIAH BENJAMIN
KAYVIN BENJAMIN**

Appearances:

Mrs. Jones Gittens for the Crown

Mr. Wendel Alexander, Counsel for the inmates

2024: July 23rd

SENTENCE REVIEW

Background

- [1] **SMITH, J.:** On 5th March, 2014 the prisoners were convicted by a jury for the offence of murder. On 17th October, 2014 both prisoners were sentenced to twenty-five (25) years imprisonment with the sentence to be reviewed after they have served eighteen (18) years.
- [2] Mr. Isaiah Benjamin had appealed his conviction and sentence on 31st October, 2014 and on 17th August, 2022 the Court of Appeal dismissed his appeal and affirmed both his conviction and sentence. On 30th November, 2023 he was brought before the Court for the purpose of reviewing the sentence as eighteen (18) years imprisonment had elapsed.

Facts

- [3] On 22nd September, 2010 the prisoner Isaiah Benjamin met an acquaintance who he had known from secondary school on a street in St. John's. He asked the young man for his assistance in locating a rental car which he said was for the purpose of attending a party later that day. The young man took him to a company in St. John's and it was there that Mr. Benjamin stated that he had forgotten his licence and asked if the acquaintance would rent the car for him for one day. In the following days, the young man received several calls from the company as the white Tiida car which was rented had not been returned. When Isaiah was contacted, he only promised to return the car.

- [4] On Friday 24th September, 2010 sometime after 11pm, patrons were hanging out at T's Bamboo Bar in Liberta drinking at the bar and playing games in the game room. Around that time a white Tiida car driven by Isaiah pulled up by the bar. He was accompanied by the prisoner Mr. Kayvin Benjamin, one Edwin Gomez and another person all of whom he had gone to different locations to pick up before heading to Liberta. When the car stopped outside the bar, three masked men, all armed with firearms, one being Mr. Kayvin Benjamin entered the bar and instructed the patrons to get on the ground. The men pointed their guns at several persons to include one of the bar's owners, Ms. Toni Martin who said to them "what you going to rob me for, I have nothing". One of the assailants fired a shotgun in the bar which struck a wall and chaos ensued as persons fearing for their safety, ran to the bathroom and others escaped by jumping out windows.
- [5] One of the patrons, Mr. George Lewis, was dragged outside by Mr. Kayvin Benjamin and another perpetrator. They patted him down and Kayvin fired a shot at him which missed. Mr. Lewis, a licenced firearm holder pulled out his gun which he was carrying and shot the prisoner. As a result, Kayvin pulled off his mask and dropped the firearm he was carrying. The other two robbers ran out the bar and got back into the car which drove off. The car later returned and collected Kayvin who was on the ground unable to walk or otherwise escape. They then drove onto the Liberta Main Road and as they were speeding away Mr. Gomez fired several shots from the vehicle, one pierced the pant leg of a young man who was walking on the road and another struck the deceased, Mr. Lyndon Isaac.
- [6] Mr. Isaac, a 42 year old taxi driver had just finished conversing with a friend and was making his way along the road when he was shot in the stomach. He was able to make his way to the home of a cousin a short distance away where he called out for help. By the time the cousin responded he had already stumbled back onto the road where he was found lying on the sidewalk unable to move. The ambulance was summoned and transported Mr. Isaac to the hospital where CPR was attempted but he succumbed to his injuries and was pronounced dead. On 8th October, 2010 a post mortem examination was conducted by Dr. Lester Simon who opined that Mr. Isaac died from haemorrhagic shock due to a gunshot wound to the abdomen.
- [7] On the night of the murder, the police commenced their investigations and on the following morning, recovered the car used in the commission of the robbery which had been left abandoned outside the rental company.
- [8] Mr. Isaiah Benjamin, then aged 21 was taken into custody on 26th September, 2010 and was later charged for murder. During the trial which took place in February 2014, he gave sworn evidence where he admitted that he was the driver of the car which took the other men to the bar and in which Mr. Gomez shot Mr. Isaac. He, however, denied that he was in possession of a firearm.
- [9] Mr. Kayvin Benjamin, then aged 24 who had been shot on the scene, went to the hospital on 25th September, 2010 where he was found with a serious injury to the left thigh which shattered bones in the leg. He was hospitalized until 4th November, 2010 and when discharged was taken into police custody and charged for the offence of murder. During the trial, he also gave sworn evidence where

he testified that he knew they were going to commit a robbery that night and it was Isaiah who called him and also picked him up in the car. He admitted to being masked and stated that he had gotten the gun and mask from an outdoor area where he saw a man hide them a couple months before he retrieved it. He further stated that he agreed to commit the armed robbery because he was idle and because his child's mother had said she was going to take him to court for child support. He stated that at least two others in the car also had firearms but he couldn't be certain about Isaiah as he had not seen it.

The Law

- [10] Section 3B of the **Offences Against the Person (Amendment) Act 2013** provides for the possible imposition of a review period where a prisoner is sentenced for the offence of murder to either life imprisonment or for a term of years. It states:

“(1) Where a person is convicted of any offence under Part I and II of this Act, and sentenced to life imprisonment or to a lesser period of imprisonment, the court may order that the sentence imposed on the convicted person be reviewed by a court of competent jurisdiction after the person has served not less than a period of –

- (a) thirty years, where the sentence is for life imprisonment, and thereafter at intervals of five years;*
- (b) twenty years, in the case of a lesser term of imprisonment, and thereafter at intervals of three years,*

and there consider whether it is any longer necessary for the purposes of deterrence, retribution, rehabilitation and in the public interest that the convicted person should be further detained.”

- [11] For the purposes of this review, the Court will be considering whether at this time, all the listed objectives of sentencing have been met and also if it is required in the public interest that the prisoners should continue to be detained.

- [12] This was a case where the prisoners had embarked on a joint unlawful enterprise and where Mr. Isaiah and Mr. Kayvin Benjamin were secondary parties in the commission of the offence.

- [13] In the landmark decision of **R v Jogee, R v Ruddock** 87 WIR 439 at paragraph 1, the Court highlighted the general principle regarding secondary party liability where it was stated that:

“It is a fundamental principle of the criminal law that the accessory is guilty of the same offence as the principal. The reason is not difficult to see. He shares the physical act because even if it was not his hand which struck the blow, ransacked the house, smuggled the drugs or forged the cheque, he has encouraged or assisted those physical acts. Similarly he shares the culpability precisely because he encouraged or assisted the offence.”

- [14] Paragraph 11 expounded on the reasons why secondary party liability is an important concept in the law:

“Numbers often matter. Most people are bolder when supported or fortified by others than they are when alone. And something done by a group is often a good deal more effective than the same thing done by an individual alone. A great many crimes, especially of actual or threatened violence, are, whether planned or spontaneous, in fact encouraged or assisted by supporters present with the principal lending force to what he does.”

Isaiah Benjamin

- [15] The Court must consider the role that this prisoner played: he was the initiator of the entire enterprise. He seemingly orchestrated the plan to leave from St. John's to journey to Liberta to rob the bar where patrons were expected to be at that time of the night. He solicited the participants, all of whom were armed with loaded firearms. He was also the driver of the vehicle which was used to convey them to and away from the scene of the crime – a vehicle that he rented for that particular purpose and made sure that the rental agreement was not in his named so that the car would not be linked to him. He therefore played a major role in the offence. It may properly be said that had it not been for him, the deceased would not have lost his life on that night in the manner that he did. Mr. Gomez who shot Mr. Isaac would not have been in Liberta as he had been hanging out in St. John's when he was solicited for the venture.
- [16] According to the legislation, the reports presented to the court should assist in the determination of the maturity, character, behaviour and attitude of the prisoner. It should also address the prisoner's willingness to make amends.
- [17] It is the Court's view that both reports presented to the Court are inadequate despite them containing some relevant aspects of the prisoner's circumstances. For example, in order for the Court to determine the maturity of the prisoner, an insight into his interactions with the prison officers and other prisoners would be useful. Also a progress report of his conduct from the time he entered the prison at age 21 to present day would be relevant. The superintendent's report was quite limited and deficient. It revealed that the prisoner started working as a baker in 2016, two years after his sentence was imposed. However, two years later he disrespected a female officer and was removed from working there but no further information is offered about this disrespectful conduct. Nonetheless almost two years later he was given a second chance to resume his duties and six months later, he was reported for having cannabis at his work place and when confronted he insinuated that the officer was a “slave driver”. Also included in his misconduct then was that he stole items from the kitchen. He was again removed from the kitchen and he commenced barbering in 2022. It was further stated that it was recently that he went back to the kitchen. This information demonstrates that there was a lack of maturity and discipline in the prisoner as he seemingly lacked respect for authority, prison rules and regulations. This was despite being incarcerated for many years. The report towards its conclusion stated that “he has mellowed and is consistently respectful and helpful”. This conclusion

stemmed from the fact that he has maintained his barbering job for a year and a half and his baking job although we are not sure of the resumption date.

- [18] This Court is interested to know what lessons the prisoner learnt through being involved in the matter and being incarcerated and what exactly led him to being involved in the offence in the first place. The content of the Superintendent's report is not very helpful in this regard as it states generally that "...he has reflected on his past behaviour, attitude and mindset that led to the *mistake* he made." Nothing is said of what changes he plans to make to avoid such a situation in the future nor whether any positive friendships, relationships, mentorships that have been forged since his incarceration which may influence a change of his mentality and lifestyle. It is noted that the prisoner stated that he wished to have an opportunity to mentor younger persons and teach them. However, it appears that nothing has been done while in the prison to exhibit the genuineness of this declaration.
- [19] In the social inquiry report, Mr. Isaiah Benjamin stated that upon his release he intends to seek employment with a relative. An uncle attended Court on 23rd July to indicate that he would be assisting the prisoner with employment and a stipend. However, the plans appeared to be "last minute and sketchy" and I am not convinced that they are concrete. When asked by the Crown whether he had discussed with the prisoner why he had committed the offence in the first place he indicated that they "didn't speak about that".
- [20] Additionally, that aspect of the report which should deal with the prisoner's willingness to make amends must begin with him accepting full responsibility for his role in the offence in order for this disposition to be considered as genuine. While there is a line on page 3 of the social inquiry report where it states that "he has accepted responsibility for his actions", it goes no further. There needs to be some expression of exactly what those actions were in order to illustrate that he understands the gravity of his actions which led to the killing of Mr. Isaac. It would be interesting to hear what role the prisoner feels he played because later on the same page of the report he laments that he did not get a fair trial which is a fact disproven by the decision of the Court of Appeal which affirmed his conviction and sentence.
- [21] Mr. Benjamin also asserted that he had reached out to the son of the deceased but there is no name given for that son and again there appears to have been no confirmation sought on this issue.
- [22] Also, while the health status of a prisoner will not move a Court to reduce a sentence and such a subject is much better raised with the Mercy Committee, this Court may have some regard to it. The report has highlighted claims by the prisoner that his medical records file at the prison is "thick" and that he had to be taken to the hospital on many occasions. However, there was no verification of that information, and the prisoner also made no mention of there being a possibility of his health hampering his future plans nor affecting him significantly while incarcerated.
- [23] The social inquiry report also did some investigation into the family of the prisoner with interviews of his parents and a sister. However, the information was not very useful as it gave no insight into the background of the prisoner and what may have led him to being involved in the offence for which he is convicted. Further, while there was some support offered by them while he was in prison, it has

ceased for a few years. The three family members all expressed wishes for his release but none have stated what support which will be provided to him at that time. Mr. Benjamin, in the prison report had stated that he would return to live with his father but this was not explored with the father when he was interviewed.

- [24] It is interesting to note that the learned trial judge when sentencing the prisoner found that twenty five years (25) would have been an appropriate sentence for the role he played in the commission of this offence. And while the law stipulated that the review should be no earlier than twenty years, the Court made an order for eighteen years (18), yet the prisoner claims unfair treatment.

Kayvin Benjamin

- [25] This prisoner was one of the participants to exit the car with a firearm to assist in effecting the robbery. After the botched robbery, he had shot at one of the patrons but missed. That patron shot him in the leg and he dropped the firearm but was able to escape. In terms of the murder of Mr. Isaac, his role was minimal; it was to the extent that he continued in the enterprise which included them needing to make good their escape. It was during that escape that their co-defendant Mr. Gomez had fired the shot out the car to ensure no one would thwart their efforts.
- [26] The reports for this prisoner are even less informative than that for Mr. Isaiah Benjamin. While it conveys that Kayvin stated that he regrets being involved in the offence, there is no insight as to what led him there and how he intends to eliminate that influence to divert him from reoffending. It is commendable though that he wishes to offer an apology to the family of the deceased.
- [27] In terms of his future, there is reference to him making plans with a brother to secure a means of earning but the investigation stopped there. There seems to have been little exploration of what he has done in prison for over a decade apart from him being an assistant to the chef in the kitchen. There is no information of how long he has held that post and it should be noted that this was not reflected in the superintendent's report. The latter report simply stated that he did not participate in any work programs but no further details were given as to whether it was a choice or the lack of opportunities. The Court desired to know what, if any, interest he ever expressed in any work as he now speaks of lofty plans to get a truck to sustain himself. All of this should have been explored by the writer of the report.
- [28] The absence of information from his family leaves the Court at a disadvantage as to whether these plans will be realized and the extent of familial support that he is likely to receive. There was no interview with the younger brother to confirm the ownership of the house and whether the prisoner will be able to reside there upon his release.
- [29] It is concerning that as recent as 2021 and 2022 he has been found guilty of breaching prison rules and in the latter instance that it related to 10 charges. As was the usual course, no details were given of the prohibited items that he possessed and notably the punishment imposed did not affect his sentence.

Impact of the Offence

- [30] Based on the interviews with the mother and sister of Mr. Isaac, it is clear that the impact of the offence is still being felt over a decade later. The Court was apprised of the fact that 14 children were left without a father (again with no in-depth research, the Court does not know how many of these children were supported financially or otherwise by the deceased). However, we learnt that the assistance was needed and none was forthcoming from social services or any other agency, Governmental or otherwise. The mother of the deceased Ms. Pauline Bowers was desirous of some empathy or sympathy from the prisoner and/or their family and more than a decade later, there has been none. This will be explored in greater detail in paragraph 39 of this ruling.
- [31] This Court after considering all the information before it about the offence, its impact and the information about the prisoners, must determine if the relevant objectives of sentencing have been satisfied. There seems to be some rehabilitation of the prisoner, Isaiah Benjamin but he does not seem to fully appreciate the gravity of the role he played in this offence.
- [32] More importantly, based on the type of offence, the objectives of retribution and deterrence need to be assessed. Is the imposition of a sentence of eighteen years (18) imprisonment sufficient in the circumstances of this case where the deceased lost his life innocently by walking along a public main road? Does it send to society the message of the Court's abhorrence for these type of offences?
- [33] The Court will, of course, bear in mind the role that each played in the offence, Isaiah would have played a greater role. Also for the Court's consideration would be the prevalence of these types of offences of armed robberies which have the potential to escalate to murders. The ease of access to illegal firearms by young men is worrying and to date, there is no truthful information of where the prisoners obtained the firearms which they had in their possession and in the case of Isaiah where it was stashed after the offence. The Court has considered whether this is relevant to the willingness of the prisoner to make amends.
- [34] This review is meant to be an opportunity of unconditional early release and therefore the Court has considered the matter very closely and carefully. This is not meant to be only an examination of whether the prisoners have been of good behaviour in recent times but a holistic study of all the information laid before the Court.

The Court's Views on the Application for Release and the Starting Point

- [35] The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) states at Rule 4 1. "The purposes of a sentence of imprisonment or similar measures the deprivation of a person's liberty are primarily to protect society against crime and to reduce recidivism".

- [36] Those purposes can be achieved only if the period of imprisonment is used productively, to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life.
- [37] International law stipulates that imprisonment should not be limited to the deprivation of liberty alone. Rather, it should include opportunities for prisoners to obtain knowledge and skills that can assist them in their successful reintegration upon release, with a view to avoiding future offending. As imprisonment, in itself, is incapable of addressing prisoners' social reintegration issues, the International Covenant for Civil and Political Rights (ICCPR) requires that "the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation".
- [38] And so, the Court in examining this review uses as its starting point the tenets of the ICCPR which Antigua and Barbuda is a signatory to and the provisions of **Section 3B of the Offences Against the Person (Amendment) Act 2013**. The Court is to consider whether it is any longer necessary for the purposes of deterrence, retribution, rehabilitation and in the public interest that the convicted persons be further detained.
- [39] In addition to the ICCPR, we have to be guided by the Nelson Mandela Rules - The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) are the single most important set of international standards that "set out what is generally accepted as being good principles and practice in the treatment of prisoners and prison management".
- [40] In its basic principles, these rules very clearly establish that the provision of rehabilitation programmes in prisons, which foster the willingness and ability of prisoners to lead a law-abiding and self-supporting life upon release, are crucial to reduce recidivism and to improve public safety—the ultimate objective of any sentence of imprisonment. The above notwithstanding, in many prison systems, few prisoners have the opportunity to learn or to work. Mr. Russel of the prison indicated that Benjamin had not shown any interest in any of the programmes offered there. He said that there was the Happy Programme, GARD, the farm programme and an academic programme run in conjunction with the University of The West Indies. Neither inmate had taken advantage of any of the aforementioned programmes.
- [41] Even in many high-income countries, prison systems struggle with providing education, vocational training and work on a scale that would be required to benefit the prison population at large.
- [42] I understand, and I realize that Antigua and Barbuda **MUST** find the resources to implement proper rehabilitation programmes, educational programmes and counselling with a concentration on restorative justice in cases such as this.
- [43] I have seen a very good educational programmes in place in Bordelais in St. Lucia and an excellent carpentry work shop at the Kolby Foundation (prison) in Belize.
- [44] This Court is forced to conclude that the government does not have the ability nor the inclination to do what needs to be done in regards to proper and meaningful rehabilitation and counselling

programmes and so the prison authorities are going to have to be creative and reach out to NGOs, civic society and international organizations to assist in this very important area.

The Role of Restorative Justice

- [45] I am not satisfied that restorative justice has been pursued in this case. There is no reason why the prison as part of its rehabilitation programme could not have reached out to the family of the deceased and sought assistance from the Probation Department to fashion a programme that would facilitate healing for all parties involved.
- [46] Restorative justice seeks to examine the harmful impact of a crime and then determines what can be done to repair that harm while holding the person who caused it accountable for his or her actions. Accountability for the offender means accepting responsibility and acting to repair the harm done.

The Court's Decision

- [47] I have read and am grateful for the brief as supplied by the acting Director. Unfortunately, the prison service has not provided any substantial information upon which this Court can rely upon to conclude that both individuals have been sufficiently rehabilitated to reward them with early release. I am neither convinced nor persuaded that this is in fact so.
- [48] While it is not their fault that adequate programmes do not exist, unfortunately these two inmates are collateral damage in these circumstances. I have heard what the Prison Superintendent has said today in Court and I am still not persuaded that enough has been done in relation to these two inmates. I am not impressed by the fact that Mr. Kayvin Benjamin has had two recent infractions breaking the prison rules. Sitting in a cell all day and night smoking cannabis does not equate to rehabilitation especially in the absence of therapeutic support.
- [49] I urge the prison to embark upon keeping detailed records of rehabilitation programmes and the participation of inmates in these programmes. What form of counselling have the inmates received for the time they have been incarcerated for example? While the Court understands that the current head of prisons only took over last year, the prison **MUST** be in possession of records that can be consulted to assist the Court.
- [50] At this point in time the Court declines to order that these inmates be released. The matter will be reviewed again in three (3) years time.

Ann-Marie Smith
High Court Judge

By the Court

Registrar