

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

COMMONWEALTH OF DOMINICA
CASE NO: DOMHCR: 2024/0003

BETWEEN:

THE STATE
V
SAMRON THOMAS
MARVIN ALBERT

APPEARANCES:

Ms Daina Matthew, State Counsel, for the State
Mr Wayne Norde and Ms Gina Abraham-Thomas for the First Defendant
Mr Bernard Pacquette of Sage Chambers with Mr Peter Alleyne of the Legal Aid Clinic for the
Second Defendant

2024: May 17th, 24th, 28th

SENTENCING

1. **COLIN WILLIAMS J:** Mr Samron Thomas, (also referred to by his first name, Samron) and Mr Marvin Albert, (also referred to by his first name Marvin), were indicted jointly by the Learned Director of Public Prosecutions, Ms Sherma Dalrymple, on the 25th of March 2024¹, for the offence of murder.
- 2 The State alleged that:

¹ Dated the 25th of March 2024 and filed on the 25th of March 2024

“Samron Thomas and Marvin Albert, on the 27th day of June 2020, at Laudat, in the Parish of St George in the Commonwealth of Dominica, in the district aforesaid did murder Damian Ernest².”

Background

3. When Mr Thomas and Mr Albert were arraigned on the 15th of April 2024, they both pleaded ‘not guilty’ to the offence of murdering Mr Damian Ernest (also referred to by his first name, Damian).
4. The Defendants’ matter came up for case management on the 19th of April 2024. Mr Albert’s counsel, Mr Bernard Pacquette, requested that the indictment be read again to the Defendants. Mr Thomas maintained his not guilty plea; Mr Albert pleaded guilty.
5. The State requested that:

(1) The Court proceed with Mr Albert’s sentencing.

(2) Mr Thomas’s trial take place after Mr Albert was sentenced.

Both applications were refused.

6. Mr Albert’s sentencing was scheduled for Friday the 17th of May 2024. An Order was made for the Department of Social Services to provide a Social Inquiry Report on or before Wednesday the 15th of May 2024.
7. The case management conference in relation to Mr Thomas took place on the 19th of April 2024, and, following that exercise, the trial was set for Monday the 29th of April 2024. The commencement of Mr Thomas’ trial, with the concurrence of Defence Counsel and State Counsel, was subsequently brought forward to Thursday the 25th of April 2024.
8. Over a period of six trial days, the State led evidence from nine of the eleven witnesses who were originally listed on the back of the indictment (at Case Management, two of the witnesses were deemed unnecessary) and Mr Thomas gave a statement from the dock in his defence. Mr Thomas did not call any witness.
9. The State’s case was based on circumstantial evidence and proceeded on the basis of joint enterprise.
10. On the 9th of May 2024, the mixed nine member jury panel returned a unanimous verdict finding Mr Thomas guilty of the murder of Mr Damian Ernest.

² The indictment, Particulars of Offence

The Facts

11. The evening preceding Mr Ernest's death, that is Friday the 26th of June 2020, Mr Ernest was at his home in Kings Hill. Both Samron and Marvin journeyed to Kings Hill in a silver-coloured HRV rental vehicle, registration number T0-380. Samron was the one who rented the vehicle. Samron then took Damian, Damian's brother Kian Jno Baptiste, (also referred to by his first name Kian), a friend of Kian's named Noah, and Marvin to a Bar and Grill in Roseau named Garage.
12. While at Garage, Damian left the group that he went with to Garage to go and speak with someone by the name of Ignashi.
13. When Damian returned to the group with whom he went to Garage, Samron informed Damian that Ignashi was in possession of a gun and that Ignashi had come to kill him (Samron). Samron told the group of men that they should return home and they all left Garage together in the silver HRV. Kian testified that on the way to Kings Hill, Samron said that "someone is snitching on him."
14. The following morning, Saturday the 27th of June 2020, around 7.00 o'clock, Marvin arrived in Kings Hill driving the silver HRV. Marvin spoke with Damian, and they both left in the vehicle.
15. At about 10.00 o'clock the same Saturday morning, Marvin returned to Kings Hill driving the silver HRV and he asked Kian for Damian – who had left earlier that very morning with the same Marvin.
16. A phone call then came through to Marvin's phone. After answering, Marvin passed the phone to Kian. Samron was on the other end. Samron told Kian that both he and Noah should get in the vehicle with Marvin and come to where he, Samron, was, at his home in Castle Comfort.
17. When Kian arrived at Samron's home, Samron inquired of him about the whereabouts of Damian. Kian informed Samron that Damian left their home that morning with Marvin.
18. The four men - Samron, Marvin, Kian and Noah - left Castle Comfort and journeyed to Grand Bay. After they arrived at Grand Bay, at about 11.00 o'clock the same Saturday, Samron suggested that they go to a place called Dayliss. Kian objected to going to Dayliss, saying that it was too far. Kian suggested that they go to Mero instead. They all agreed to go there. Samron then gave the vehicle to Marvin to drive.
19. At Mero, Samron and Marvin got out of the vehicle and went to the beach; Kian and Noah remained in the vehicle until Samron and Marvin returned.

20. When the four men (Samron, Marvin,, Noah and Kian) left Mero, Kian was driving the silver HRV. On the journey back to Roseau, Samron passed his cell phone to Kian, so that Kian could see a picture on the screen. It was an image of Damian lying at the side of a road; Damian appeared to be bleeding.
21. Samron then reminded Kian that Damian was talking with Ignashi the previous evening. Samron inquired of Kian what he wanted them to do; and Samron suggested that they go to Grand Bay and “get gun to shoot up the place.”
22. Kian said that he wanted to go to where his brother’s body was. Samron indicated that he would drive and he drove directly to the trail leading to the Boeri Lake in Laudat where the body was.
23. When the men arrived at Laudat, the police were already on the scene. The body was previously discovered that morning sometime between 9.00 and 10.00 o’clock by someone who was taking his family and friends to the fresh water lake.
24. At the scene, the police found seven expended cartridge cases/shell casings and a deformed bullet.
25. Kian identified Damian’s body to the police at the scene and in response to questions from a police officer, he indicated that the last time he saw his brother was at about 7.00 am that day when Damian left in the HRV with Marvin.
26. The police at the scene in Laudat decided that Marvin could assist them with their investigations. Marvin was placed in a police vehicle. The police transported Marvin to the CID in Roseau.
27. Samron drove Kian to the hospital, where Kian again identified his brother’s body.

The investigation

28. At about 5.00 pm the same Saturday, 27th of June 2020, Samron went to the CID and the police decided to detain him as well. Samron and Marvin were housed at different police stations, but they were brought to the CID at times during the course of the investigation.
29. On Monday the 29th of June 2020, Assistant Superintendent of Police, Matthew Cuffy, was in his office at the CID in Roseau, where he spoke to both Samron and Marvin in the presence of two police officers – the investigating officer, Corporal 180 Gavin James and Corporal 353 Bartholomew Nichols.
30. ASP Cuffy asked Samron and Marvin to hand over the firearm which was used in the shooting death of Damian Ernest the previous Saturday, the 27th of June 2020. There was an argument between Samron and Marvin. Samron then informed the ASP that he wished

to speak with him in private. Marvin and the two police officers were excused from ASP Cuffy's office.

31. Shortly after the police corporals and Marvin left the office, ASP Cuffy summoned Corporal Nichols and in the presence of Samron, stated that he wished for Corporal Nichols to accompany them to Grand Bay. ASP Cuffy, Corporal Nichols and Samron left the station in Roseau in a police vehicle with Officer Nichols driving.
32. On arrival at Montaine, in Grand Bay, the police vehicle was brought to a stop and Samron was allowed to make a telephone call. Samron then gave further instructions to Corporal Nichols where to drive and when to stop. Samron pointed to a bag at the side of the road close by to where an individual was standing. Corporal Nichols went and retrieved the bag that Samron pointed out to him. Corporal Nichols upon returning to the vehicle opened the bag in the presence of Samron and ASP Cuffy; there was a firearm inside of the bag. Corporal Nichols handed the bag over to ASP Cuffy. The police officers and Samron then returned to the CID in Roseau.
33. At the CID, at about 2.30 pm on Monday the 29th of June 2020, ASP Cuffy invited Corporal James into his office to join the three persons who had just returned from Grand Bay. The bag that was brought back from Grand Bay was searched in Samron's presence. It contained a firearm, and a magazine with 3 rounds of ammunition in the magazine. ASP Cuffy informed Corporal James that he recovered the firearm from Samron. Corporal James noted that it was a black and silver pistol and he observed from the markings on the firearm that it was a Smith and Wesson pistol, with serial number FWX9068.
34. At about 3.00 pm on the same Monday, the 29th of June 2020, ASP Cuffy asked Samron and Marvin to take the police to Castle Comfort, where Marvin took Damian the previous Saturday, then from there to Laudat, where Damian's body was found. Samron and Marvin agreed.
35. During the journey from Castle Comfort to Laudat, on arrival at the Copthall junction with the Trafalgar Road, Marvin asked the police to stop so he could point out something to them. Samron however stated that it was not there that he had told Marvin to stop and give the vehicle to Damian to drive. Samron later pointed out an area closer to Laudat where he gave the instructions on Saturday the 27th of June 2020 to Marvin to let Damian drive the vehicle.
36. On arrival at the area where Damian Ernest's body was found the previous Saturday, both Samron and Marvin pointed out where they were when Damian was shot.

Medical Evidence

37. Dr Nebiyu Bekele on Saturday, the 27th of June 2020, pronounced the body of Damian Ernest as being “dead upon arrival” at the Hospital. Dr Bekele noted: “Multiple gunshot wounds ranging from 0.5 – 2 cm.”
38. A post mortem was performed by Dr Idemys Alarcon Arango on the 2nd of July 2020. Dr Arango concluded that “death was due to hypovolemic shock resulting from the many wounds suffered and internal and external hemorrhaging.”
39. Dr Arango said that the “abrupt loss of blood by volume provoked a reduction in oxygen being brought to the cells and provoking damage to organs such as the kidney, the heart, lungs and brain.” The doctor concluded that “death occurred within minutes.”
40. The pathologist identified several wounds:
 - i. Left cheek;
 - ii. Left side of the neck;
 - iii. Left shoulder;
 - iv. Right mandible;
 - v. Right shoulder;
 - vi. Right thigh;
 - vii. Between the 3rd and 5th dorsal vertebrae.
41. There was approximately 2 liters of blood in the pleural cavity.
42. Three bullets were also recovered from the body during the postmortem. The bullets were placed in containers and handed over to the police.
43. The doctor did not testify about any exit wounds.

Examination - firearm and ammunition

44. The bullets that were retrieved from Damian’s body were apparently misplaced and so were not sent for any forensic examination.
45. The 7 cartridge cases/shells and deformed bullet retrieved from the scene at Laudat, and the firearm, magazine and 3 rounds of ammunition obtained during the course of the investigation, were taken to a firearms examiner, retired Inspector of Police Jefferson Ferrol, who prepared a report of his findings.
46. Mr Ferrol noted that the firearm was a Smith and Wesson model SD40 VE .40 caliber semiautomatic 4 inch barrel, bearing serial number FWX9068. The pistol was black and silver in colour.

47. The firearm was in good working order – not sluggish, no flaws, no defects.
48. The magazine was a 10-round .40 caliber, suited for use in the submitted firearm.
49. The 7 cartridge cases/shells (which were the ones recovered from the scene at Laudat on the 27th of June 2020), were .40 caliber and bore various head stamps – that is, they were from various manufacturers:
 - a) 2 were .40 S&W CBC, consistent with being manufactured by CBC, Brazil;
 - b) 1 was a PMC .40 S&W consistent with being manufactured by Eldorado Cartridge Corporation.
 - c) 1 was an S&B .40 S&W, consistent with being manufactured by Stellar & Bellot; and
 - d) 3 were Federal .40 S&W, consistent with the being manufactured by Federal Cartridge Company;
50. The three rounds of ammunition that were submitted with the firearm and magazine bore two sets of manufacturer head stamps:
 - a) 2 of them were .40 S&W CBC; and
 - b) 1 was a PMC .40 S&W.
51. In summary:
 1. The Smith and Wesson firearm Samron took the police to Grand Bay to retrieve was in good working order.
 2. The Smith and Wesson firearm was capable of firing the .40 calibre cartridge cases/shells that were found at the scene of the shooting at Laudat on Saturday the 27th of June 2020.
 3. The magazine was suited to work with the Smith and Wesson firearm.
 4. The seven cartridge cases/shells retrieved at the scene at Laudat were all .40 caliber, but made by four different manufacturers.
 5. The three rounds of ammunition retrieved from the magazine that was with the Smith and Wesson pistol were of the identical make as three of the cartridge cases/expended shells found at the scene in Laudat.

6. The magazine that was with the firearm had a capacity for 10 rounds: seven cartridge cases/shells were recovered at the scene and three live rounds were in the magazine.

Retraction of plea?

52. On the 17th of May 2024, as the sentencing hearing for Mr Albert was about to commence, Counsel Mr Pacquette indicated that his client wished to rescind the plea that he had entered more than a month previously.
53. No written application was filed giving any notification of a desire to change the plea. No affidavit evidence was presented outlining any reason or reasons for wishing to change the plea. No statement was provided from any witness. No authorities were cited in support of the wish to change the plea.
54. Mr Pacquette contended that the guilty plea entered by Mr Albert was not voluntary but was made "subject to threats."
55. Counsel agreed that his client could be sworn and evidence elicited from him about rescinding his guilty plea.
56. Mr Albert in his testimony said that when he pleaded guilty he did so as a result of "threats for me to plead guilty." He said that he received a threat while in prison in June-July 2021, from a friend of his cousin who was in prison at that time but who had since died. Mr Albert said he was told by this now deceased person that: "If I don't plead guilty and I let his friend go to jail, when I come out he will let his friends kill me." He said that he informed a prison officer named Lawrence as well as his mother about the threat that was made to him.
57. Mr Albert said that there was a second occasion on which he was threatened. He said that in April 2024, when he came to court, Samron Thomas told him to plead guilty. Mr Albert said that he told his mother that day about being threatened.
58. Mr Albert agreed that he was the one who told his lawyer on the 19th of April 2024 that he wanted to plead guilty and he went ahead and did so when the charge was read to him once again. He did not say anything to his lawyer about being threatened. He remembered being told by the Judge on the day of arraignment that an accused person must only plead guilty if that person knew he was guilty and that a person must not plead guilty out of frustration, convenience, or to take the blame for someone else. Mr Albert said that the first time that he told his lawyer that he wanted to change his plea, was a few days earlier on Tuesday the 14th of May 2024. By the time he did so, he had already cooperated with the sentencing process and spoken with the Probation Officer and the trial of his co-accused was already completed.

59. Efforts to locate the prison officer named "Lawrence" to come to court were unsuccessful, as it was the day off for the prison officer named Lawrence.
60. Mr Albert's mother, Ms Annie Dowe, testified that on the 19th of April 2024, all that her son told her in a telephone call was "that he guilty." She did not recall having any conversation with her son in June-July 2020 about the case. The first time that she heard about any threats to her son to plead guilty was "this week here." Prior to that, Mr Albert did not tell her of any threats.
61. Having heard from Mr Albert and his mother and noting what counsel said on Mr Albert's behalf, it was determined that there was no basis for holding that Mr Albert's plea was anything other than voluntary.

Victim Impact Statement

62. Probation Officer, Ms Anya Gage, and Social Welfare Officer Ms Sabrina Seaman, conducted separate interviews with Damian Ernest's relatives.
63. Ms Anne Ernest, the mother of the deceased, recalled that Damian was 23 years old at the time of his death. Ms Ernest disclosed that she shared a special bond with Damian as they were both March born, their birthdays being one day apart. Damian was the third of her seven children. As Damian grew up, she was his primary caregiver. Damian attended the Roseau Primary School, then the Goodwill Secondary School, but exited the formal education system in Form Four. Ms Ernest stated that when Damian was killed, she ended up being hospitalized after suffering a panic attack. In the days following the incident, she felt that she was on the verge of suffering a mental breakdown and that she had a fear of being hurt or killed. She said that since Damian's death "the family no longer engages in activities as before," and whenever they do anything, there is always something to remind them of Damian. It took her three months following Damian's death to regain some form of normality. She lost her appetite and became ill. Her faith in God was tested; she questioned God's existence and plotted how to gain vengeance for her son. She said that although she can forgive, the guilty must find the courage to forgive themselves for their act. Ms Ernest noted that no prison sentence can resurrect her son.
64. Kian Jno Baptiste described his brother as "a kind and friendly young man with a good soul... always willing to help others." He said that Damian always watched over him and his sisters. Mr Jno Baptiste said that following the incident he felt "distraught and hopeless" and that "he experienced a period of depression and was not motivated to engage in daily activities." He felt fearful for his life and has since become distrustful of others and "feels paranoid when in the company of unfamiliar individuals." In the beginning, he feared for his life, as he believed that he would be killed. He felt free when his brother was alive, but now he feels challenged.
65. Cydonie Registe said that being the last born child, her brother protected her and helped her with homework.

66. Mr Jno Baptiste and Ms Ernest said to one of the Department of Social Services officers that they only got to know Mr Albert about three months prior to Damian being killed. (Ms Ernest said “a few months”). Mr Albert for his part, said that he knew Mr Ernest “for about a month, through a mutual friend.” During the trial, Mr Jno Baptiste said in relation to Samron, that he “first met Mr Thomas in June 2020,” that is, the same month Damian was killed.

Social Inquiry Report – Samron Thomas

67. Social Welfare Officer, Ms Sabrina Seaman, prepared the Social Inquiry Report in relation to Mr Thomas³. Notably, the report stated that he gave his residence as Montine, Grand Bay. Ms Seaman reported that Mr Thomas lived at Grand Bay “for all his life until his incarceration⁴.” The evidence at trial was that at the time of the offence in June 2020, Mr Thomas resided in Castle Comfort. At the Sentencing Hearing on Friday the 24th of May 2024, Ms Seaman, in responding to queries about Mr Thomas’ residence, said that he did not indicate that he lived away from Grand Bay for two or three years. Ms Seaman said that she did ask that question.
68. Mr Thomas is the second child of the marriage of his parents and the only son. He dropped out of school when he reached Form Three at Pierre Charles Secondary School. He started to work in construction at age 16. He is the father of a two year old – conceived and born after the death of Damian.
69. Mr Thomas told the Social Welfare Officer that during his time in school “he fought, loitered, walked out of classrooms and was often truant. He disclosed that he had no respect for the school’s rules... Then he became involved with friends who had negative behaviours, and as such, he lost interest in his academics⁵.” He was suspended from school on one occasion.
70. Mr Thomas said that “although he was respectful and followed rules within the home, he did not accept or follow the rules outside of the home setting⁶.”
71. Mr Thomas indicated that he was never charged or convicted for any offence as a juvenile. As an adult, he has another charge of murder and a firearms charge (but no conviction).
72. The Social Welfare Officer noted that: “Mr Thomas did not express remorse, but rather maintained his innocence. He said he feels sad that he was found guilty of a crime he did not commit, especially given that someone else has already pled guilty to the offence⁷.”

³ Social Inquiry Report dated the 21st of May 2024 and filed on the 22nd of May 2024

⁴ Social Inquiry Report paragraph 3.1

⁵ Social Inquiry Report paragraph 4.2

⁶ Social Inquiry Report paragraph 6.3

⁷ Social Inquiry Report paragraph 7.1

73. Ms Seaman reported that Mr Thomas told her he had been “traumatized by the entire ordeal” because he witnessed his “friend being murdered and could not help him.” Mr Thomas declined the offer to have counselling, indicating that he does not think of the deceased continuously⁸.
74. It was noticeable that the individual described by Mr Thomas’s family, diverged not only from that described by the community, but differed from what Mr Thomas said about his own activities. The Social Welfare Officer said: “While Mr Thomas’ family members describe him as a good person, the community assessment revealed the opposite. Mr Thomas indicated that he had an early initiation to violence and lacked respect for rules outside of the home⁹.”
75. Members of the Grand Bay Community described Mr Thomas “as one who had no restraint as a child.” Members of the Community alleged that “Samron’s destructive behaviours were condoned as a child, and he was never made to take responsibility for his actions.” He was described as “disrespectful;” and “disobedient.” It was also said that he “instilled fear in his community members and would openly threaten others with violence¹⁰.”
76. In concluding the Social Inquiry Report, Ms Seaman noted: “Samron Thomas has not accepted responsibility for his actions and continues to maintain his innocence.... Samron Thomas does not desire to be incarcerated but wants the Court to release him. This speaks to his lack of remorse and the absence of accountability.¹¹”

Social Inquiry Report – Marvin Albert

77. Probation Officer, Ms Anya Gage, in her Social Inquiry Report¹², stated that Mr Albert was now aged 24 years. He was from Grand Coulibri, Grand Bay. He was the last-born child of four children from the common law union of his parents. His parents were farmers. He never experienced any type of abuse at home, neither was he bullied at school. When Mr Albert was 11 years old, his father left the household and relocated to elsewhere in Grand Bay. The passage of Hurricane Maria proved to be particularly challenging. It substantially damaged the four-bedroom house the family resided in and only two bedrooms have been restored; following Hurricane Maria, Mr Albert’s mother had difficulty acquiring school supplies and he dropped out of school. He started working as a Warehouse Assistant in 2018 and earned \$1,000.00 a fortnight.
78. Ms Gage interviewed Mr Albert at the prison on the 25th of April 2024. He described himself as “helpful, peaceful, and ambitious¹³.” He viewed himself as the “protector of his family,

⁸ Social Inquiry Report paragraph 7.2

⁹ Social Inquiry Report paragraph 10.2

¹⁰ Social Inquiry Report paragraphs 8.9.2 and 8.9.3

¹¹ Social Inquiry Report paragraphs 10.2 and 10.3

¹² Social Inquiry Report dated the 13th of May 2024 and filed the 14th of May 2024

¹³ Paragraph 6.1

particularly his mother¹⁴.” Mr Albert “recalled his mother warning him about the friends he kept and he regrets not listening to her¹⁵.” He started consuming alcohol at age 15 and started smoking marijuana since remanded at the prison “to distract himself from feelings of disappointment¹⁶.”

79. Prior to Mr Albert’s incarceration, for recreation he played cricket, fixed bikes, helped construct Carnival costumes and accompanied cultural bands to cultural events.
80. The Probation Officer noted that: “Mr Albert expressed remorse and regrets being at the scene of the crime.... Mr Albert acknowledged that he was present when the incident occurred but insisted that he did not commit the crime. He explained that his admission of guilt came about due to threats to his life if he did not accept responsibility for the offence.... Mr Albert desires to serve a prison sentence, knowing that his life and that of his family will be safe¹⁷.”
81. At the sentencing hearing, Ms Gage acknowledged that in her experience she had never encountered anyone who, claiming that they were innocent of murder, said that they were willing to go to jail for the offence.
82. Ms Gage, in concluding her findings in the Report, said that based on her interviews, “Mr Albert was depicted as a good, helpful, quiet and non-violent individual by his family, friends and community members.” She went on to repeat that he was remorseful “for being present at the scene¹⁸.”

Mitigation pleas

83. Mr Wayne Norde in his mitigation plea on behalf of Mr Thomas, emphasized the fact that at the time of the offence, Mr Thomas was 19 years old. Counsel termed it: “in the prime of his youth.” Mr Norde noted that Mr Thomas is now the father of a two year old girl. Counsel also noted that Mr Thomas had no previous convictions; he was a first time offender.
84. Counsel was of the view that Mr Thomas, having taken the police to Grand Bay to get the gun, ought to be given credit for assisting the police. Counsel submitted that Mr Thomas has shown remorse. Counsel stated given Mr Thomas’ age, he was a good prospect for rehabilitation.
85. Counsel Norde urged that the sentence be “innovative, fair and reasonable.” He referred to two cases in his submissions: **The Crown v Azim Phillip¹⁹** and **The Queen v Andreas**

¹⁴ Paragraph 6.2

¹⁵ Paragraph 6.3

¹⁶ Paragraph 6.4

¹⁷ Paragraph 7.3

¹⁸ Paragraphs 16.1 and 16.2

¹⁹ GDAHCR2020/0013

Norford²⁰. In Counsel's view, a determinate sentence was appropriate in this case. He was of the view that computation of the sentence ought to "start at the lowest point" of 30 years. Mr Norde felt that after consideration for the mitigating factors that he identified, that a sentence of 25 years was appropriate.

86. Mr Bernard Pacquette in his submissions on behalf of Mr Albert, noted that Mr Albert pleaded guilty at the first opportunity. Mr Albert had no previous convictions.
87. Mr Pacquette noted that Mr Albert was now 24 years and in Counsel's view, got into trouble from following friends. Counsel also submitted that Mr Albert "cooperated with the police and was helpful to the investigation." Counsel said that Mr Albert was "remorseful at the entire situation."

Sentencing Guidelines

88. The determination of the sentences to be imposed on Mr Thomas and Mr Albert has to be done individually, considering their personal circumstances, including the character and record of each one and the possibility of reform. There may, however, be points of commonality between the two individuals, when an examination is done of the nature and gravity of the offence, as well as the design and execution of the offence. The procedure to be adopted on sentencing for both men is identical.
89. The general principles²¹ to be observed on sentencing an offender are:
 - Retribution.
 - Deterrence (Specific and General).
 - Prevention.
 - Rehabilitation
90. In any given case, one principle or the other may be more important or more applicable than the others. In the circumstances of this case, the two factors that are most relevant to both Mr Thomas and Mr Albert are principally, retribution, and also rehabilitation. The punishment must fit the crime; and the offenders must be given sufficient time and opportunity in a controlled and supervised environment to prepare them to possibly re-enter society as reformed and productive persons.
91. Sentencing for murder is governed by the **Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019**, re-issued on the 12th of April 2021, (**Practice**

²⁰ Territory of the Virgin Islands Criminal Case No: 4 of 2016

²¹ Per Lawton, LJ, R v Sargeant 60 Cr. App R. 74 at page 77; also Byron, CJ, Desmond Baptiste v The Queen SVG High Court Criminal Appeal No 8 of 2003

Direction 8E No: 1 of 2021). Four types of sentences may be imposed on an adult for murder²²:

- (1) a sentence of death,
- (2) a whole life sentence,
- (3) a determinate sentence, or
- (4) detention at the court's pleasure.

92. A sentence of death may only be imposed, according to the **Sentencing Guidelines**, in cases:

- considered to be “the rarest of the rare;”
- considered to be “the worst of the worst;”
- where there is no reasonable prospect of reform of the offender;
- the offender has been appropriately evaluated by a psychiatrist;
- the character of the offender and any other relevant circumstance are taken into account so far as possible as mitigation in the offender's favour; and
- the object of punishment cannot be achieved by any other means than a sentence of death.

93. The facts and circumstances of this case do not meet the standard for a sentence of death; neither has the State served a ‘Death Penalty Notice,’ which is a prerequisite.

94. The **Sentencing Guidelines** also make it clear that: “Detention at the court's pleasure [is imposed] where the offender has been found to be insane or suffering relevant mental illness.” There is no suggestion that either Mr Thomas or Mr Albert suffer from any such challenge.

95. Paragraph 4 of the **Sentencing Guidelines** provides that “the appropriate starting point is a whole of life sentence: if:

²² Paragraph 2 of the Sentencing Guidelines

- a. “the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high; and
- b. “the offender was an adult when he committed the offence.”

96. The **Sentencing Guidelines** then provide at paragraph 5, a non-exhaustive list of instances “where the seriousness of the offence can be considered exceptionally high.” That list includes²³:

“c. a substantial degree of premeditation or planning.”

97. The narrative in this case points to the seriousness level in the planning and execution of the offence. The evidence adduced in this case shows that:

- a. At about 7.00 am on the 27th of June 2020, Marvin turned up at Damian’s home at Kings Hill in Samron’s vehicle;
- b. Marvin had a conversation with Damian after which Damian boarded the vehicle and left with Marvin.
- c. Marvin took Damian to Samron’s home at Castle Comfort.
- d. Samron and Marvin then left with Damian from Samron’s home at Castle Comfort in Samron’s HRV vehicle and headed to the secluded Boeri Lake at Laudat;
- e. Along the way to Laudat, Samron instructed Damian to replace Marvin as the driver of the HRV vehicle;
- f. Damian was shot and killed and left at the side of the road leading to Boeri Lake;
- g. Samron and Marvin left Laudat and Samron returned to Castle Comfort;
- h. Marvin after dropping off Samron, went back to Kings Hill and asked Kian for his brother, Damian (whom Marvin knew was shot and left at the roadside in Laudat);

²³ See *Evanson Mitcham v The King* SKBHCRA 2022/0004, per Ward, JA, at paragraph [30]: “The aggravating and mitigating factors listed are not meant to be exhaustive.... The Guidelines deliberately afford that measure of flexibility to judges in recognition that there is a wide and varied range of circumstance under which a criminal offence may be committed, all of which cannot conceivably be captured in a guideline.”

- i. Soon after Marvin arrived at Kings Hill, Samron called Marvin's phone and asked to speak with Kian. Samron invited Kian and Noah to come to Castle Comfort; Kian and Noah complied;
 - j. At Castle Comfort, Samron quizzed Kian as to the whereabouts of Damian (even though Samron knew Damian was already shot and killed at Laudat);
 - k. Samron, Marvin, Kian and Noah journeyed briefly to Grand Bay, then to Mero;
 - l. On the way back from Mero, Samron showed Kian a picture of Damian's bleeding body lying at the side of the road;
 - m. Samron reminded Kian about the previous evening when Damian went to speak with Ignashi;
 - n. Samron inquired of Kian if he wanted to go to Grand Bay and get a gun to "shoot up the place;"
 - o. Two days after the killing, the police asked Samron and Marvin for the firearm that was used to shoot Damian. Samron took the police to Grand Bay and the police retrieved a bag pointed out by Samron which contained a firearm of the identical caliber to that which fired the expended shells found next to Damian's body.
98. Cumulatively, the factors point to a substantial degree of planning and premeditation. There were steps to prepare for the killing and steps to conceal what was done. The seriousness level for this offence was therefore exceptionally high.

Considerations - Samron Thomas

99. As outlined earlier, the **Sentencing Guidelines** state at paragraph 4 a, that when "the court considers that the seriousness of the offence is exceptionally high" that the appropriate starting point is a whole of life sentence.
100. It is expected that the Sentencing Guidelines will be followed. As stated on page 1 of the **Compendium Sentencing Guidelines**:

"[T]he court must apply the relevant guidance and sentence accordingly, unless to do so would not be in the best interest of justice. It is only permissible to depart from the guidelines in exceptional circumstances, where such departure can be justified. Clear reasons for not applying the guideline must be given when passing sentence."

101. The whole of life sentence must be imposed, unless it can be shown that:

- 1) It is not in the best interest of justice to impose a sentence in accordance with the guideline;
- 2) Exceptional circumstances exist for the departure;
- 3) The departure can be justified; and
- 4) Clear (written) reasons are stated for departing from the guideline.

102. An assessment of the aggravating and mitigating factors may be of some assistance in deciding whether there ought to be a departure from a whole of life sentence.

103. The State's case was that Mr Thomas was the architect of Damien Ernest's demise. The circumstantial evidence marshalled by the State in support of the view that Mr Thomas was in charge, and to show his state of mind, included:

1. It was Samron's vehicle which everybody traveled in;
2. Samron decided who must drive, and he would even give instructions to change the driver during a journey;
3. Samron was the one who decided where they must go – for example, to Garage, to leave Garage and return to Kings Hill, to Castle Comfort, to Grand Bay;
4. Samron decided that they should leave Garage on the evening of the 26th of June 2020 because he perceived that Ignashi had a firearm and intended to kill him;
5. Samron commented in the vehicle during the journey back to Kings Hill from Garage on the evening of the 26th of June 2020 that "someone is snitching on him;"
6. Right after showing Kian Jno Baptiste the picture of Damian's body, Samron reminded Kian of "last night" when they were at Garage that Damian went to speak with Ignashi;
7. Samron inquired as to whether Kian, having seen the picture of his brother's body, wanted to "go to Grand Bay and get gun to shoot up the place"

104. It is an aggravating factor when an individual plays a lead role in a joint enterprise. An individual may play a lead role irrespective of whether or not that individual ended up being the principal who actually committed the offence. Someone other than the principal can play a lead role.
105. There are no mitigating factors with regard to the commission of the offence.
106. The caution of the President of the Caribbean Court of Justice, the Honourable Adrian Saunders, in **Ronaldo Anderson Alleyne v The Queen**²⁴ must be kept in mind:
“Life sentences fall into a unique category of offences. If after considering all the aggravating and mitigating circumstances of the offence (as distinct from those of the offender) a judge is initially disposed to impose a life sentence, that disposition can be softened in appropriate cases upon consideration of the mitigating circumstances that relate to the offender. That would be because matters such as the offender’s early guilty plea; or his age; or level of remorse or social or economic circumstances cause a judge to moderate his or her original disposition in favour of a lesser sentence measured in terms of years or months.”
107. With regard to the factors impacting on the offender, it is accepted that Mr Thomas has no previous convictions. He is a first time offender. The information provided from the Prison Service indicates that Mr Thomas was remanded for this offence on 30th of June 2020. He received bail on the 24th of February 2022 after one year, 7 months, 3 weeks and 4 days in custody. He was subsequently returned to the Dominica State Prison on or about the 8th of February 2024 on a different matter.
108. In the Social Inquiry Report, Prison Officers are reported as describing Mr Thomas “as a ‘big child’ who has not yet accepted his fate.... Mr Thomas still believes he would be spared a custodial sentence.” The Prison Officers noted that “although Mr Thomas is not the instigator in any fights, he will participate if there is an ongoing dispute among inmates.... Mr Thomas is not always compliant with the rules.... [W]hile Mr Thomas’s behavior is not the best, he did not cause any major disruption.”
109. Mr Thomas’s relative youthfulness at the time of the offence is a consideration in favour of departing from the whole of life sentence.
110. In the consolidated judgment, **Desmond Baptiste v The Queen**²⁵ the Eastern Caribbean Court of Appeal considered the issue of relevance of age and/or prior criminal history. Sir Dennis Byron, CJ, (as he then was) said, at paragraph [29]:

“As to the fact that the offender was committing crime for the first time, it seems to us that the importance of this circumstance should be left to the discretion of the sentencer as a matter that is to be taken into account with all other mitigating

²⁴ 2019 CCJ 06

²⁵ Saint Vincent and the Grenadines High Court Criminal Appeal No 8 of 2003, delivered 6th of December 2004

circumstances of the offence. It must be stressed though that the more serious the offence, the less relevant will be this circumstance.”

111. Sir Dennis in the **Desmond Baptiste** judgment went on to quote approvingly the decision of Lord Lane, CJ, in **Turner v The Queen**²⁶ who in an armed robbery case said: “the fact that a man has not much of a criminal record, if any at all, is not a powerful factor to be taken into consideration when the Court is dealing with cases of this gravity.” Here it must be noted that murder is qualitatively more serious than armed robbery.

112. Chief Justice Byron, went on to say, at paragraph [30] of **Desmond Basptiste**:

“On the issue of the age of the offender, a sentencer should... take care to consider the prospects of rehabilitation and accordingly give increased weight to such prospects. Where imprisonment is required, the duration of incarceration should also take such factors into account.... As with first time offenders, the more serious the offence, the less relevant will be these circumstances.”

113. Although Mr Thomas was aged 19 years at the date of the offence, it must be borne in mind that he entered the job market early – at age 16. He was not living at home. His income and responsibility level enabled him to have a rental car at his disposal. He appeared from those circumstances to be more mature and shouldering responsibilities that other persons his age were not required to do. He is now the father of a young child. Apart from the fact of his chronological age, Mr Thomas had no previous convictions, which is another mitigating factor; he was not a juvenile offender.

114. Counsel submitted that Mr Thomas by virtue of his age, was a good prospect for rehabilitation. This factor must be considered along with the fact that Mr Thomas, who got bail in this matter after nearly twenty months on remand, was back in custody on remand on other serious matters in quick time. Also he has not yet demonstrated while at the State Prison a propensity to be compliant.

115. Of the other mitigating factors raised by Mr Norde one which was considered to have some merit was the fact that Mr Thomas assisted the police in retrieving the firearm.

116. That fact that Mr Thomas (1) had no previous conviction; (2) was relatively young at the time of offending; (3) may be a good prospect for rehabilitation; and (4) assisted the police to some extent by leading them to the firearm, are not sufficient to overpower the exceptionally high seriousness of this offence. Accordingly, the whole of life sentence is the appropriate sentence to be imposed.

²⁶ (1975) 61 Crim. App. Rep. 67

Considerations - Marvin Albert

117. Having determined that the substantial degree of planning and premeditation places the offending in the killing of Damien Ernest in the whole of life category, and that Mr Albert is equally as culpable in this case of joint enterprise murder, what has to be addressed at this point is Mr Albert's early guilty plea, prior to the scheduling of a trial date of this matter.
118. Paragraph 7 a. of the **Sentencing Guidelines** provides that "where the offender has pleaded guilty and would otherwise face a whole of life term" the sentence must then be computed on the basis of a determinate sentence, but "there would usually be no further discount on account of the guilty plea."
119. According to paragraph 8 of the **Sentencing Guidelines**, "the appropriate starting point is a determinate sentence of 40 years, within a range of 30-50 years."
120. In deciding on the starting point, it must be noted that this was a cruel murder, committed with a degree of viciousness and deliberateness. It was unprovoked. It was not a spontaneous act. Seven rounds were shot into Damian's body. Mr Ernest was taken to a somewhat remote area, shot, and left at the side of the road.
121. This offence was clearly at the higher end of the range given the manner of execution and Mr Albert's post-offence conduct, exemplified in the uncaring way he casually pretended to the dead man's brother that he, Mr Albert, did not know where Damien Ernest was. A starting point of 45 years seems reasonable.

Adjustment for aggravating and mitigating factors

122. The starting figure must be adjusted following a consideration of the aggravating and mitigating factors first, in relation to the offence, then secondly, in relation to the offender.
123. Notable aggravating factors with regard to the commission of the offence include:
 1. There was a degree of betrayal. When Marvin took Damian from Kings Hill on the morning of the 27th of June 2020, Damian must have thought that he was with a friend and clearly could not have anticipated the fatal turn of events.
 2. There was the effort to conceal and mislead. This was evident by not only the location that Damian was taken to be executed, but also from what transpired when Mr Albert returned to Kings Hill and sought to ask Kian about Damian's whereabouts.
 3. The deliberate ploy to attempt to be away from the murder scene in the company of the deceased man's brother at the time the body was discovered.

124. The mitigating factor in relation to the offence, was that Mr Albert was a subordinate in the commission of the offence. The State's case against the co-accused, Mr Thomas, was that Mr Thomas was the mastermind behind Mr Ernest's killing. The evidence at the trial was that in Mr Albert's presence, Mr Thomas pointed out to the police while at the location in Laudat, where he was seated in the vehicle at the time that Mr Albert shot Mr Ernest. The only evidence put before the jury as to who was the principal pointed to Mr Albert as being the omne who did the shooting. Counsel, Mr Pacquette in his mitigation plea sought to give a different narrative as to how the shooting occurred. He said that it was actually done by Mr Thomas, who winked, nodded and gestured to Mr Albert just prior to shooting Damian. There was no evidence in the case to support Mr Pacquette's narrative from the bar table.
125. The sole aggravating factor in relation to the offender is his attempt to cast blame for the offence on others.
126. A mitigating factor in relation to the offender was that Mr Albert had no previous convictions. Even though he was young at the time of the offence, he was sufficiently old to know better and do better. He was out of school for several years and was a working person since 2018.
127. Counsel Pacquette dictated a statement he said came from Mr Albert:
- “In this life, I never planned to come to jail. I always planned on working for what I want. It is because of bad friends that I follow that bring me to prison. I never wanted to be in jail. I never wanted to be in this kind of life. I want you to forgive me and I promise I will not return in here again in my life. I want to go and help my mother. She misses me very much.”
128. At no point in the prepared statement or on any occasion has Mr Albert admitted that he was wrong; at no time has he apologized. Mr Albert has shown no remorse in relation to his actions and conduct in the commission of the offence. He was entitled to speak on his own behalf, whether from the dock or the witness box, if he so desired; he did neither.
129. The Probation Officer reported that Mr Albert during his interview expressed regret at being present at the scene at the time of the killing. Ms Gage stated that: “Mr Albert acknowledged that he was present when the incident occurred but insisted that he did not commit the crime.”
130. Mr Albert's participation in the offence was not restricted to being at the scene; he was actively involved in facilitating the crime. He was the one who went to pick up Damian at Kings Hill on the morning of the killing. The evidence at the trial contradicts Mr Albert's statement to the Probation Officer. The testimony from the Scenes of Crime officer, Inspector Fixton Henderson, was that when the police and the then suspects [Mr Thomas and Mr Albert] visited the scene at Laudat on Monday the 29th of June 2020, Mr Thomas in the presence of Mr Albert, pointed to Mr Albert as being the principal who shot Damian

Ernest. Mr Albert's insistence of mere presence was contrary to the evidence that emerged during the trial, where the gun was placed in his hands.

131. Having considered the aggravating and mitigating factors in relation to Mr Albert, the aggravating factors exceed the mitigating factors.

132. Four years is to be added to the 45 years for the preponderance of the aggravating factors. That takes the sentence up to 49 years.

Deduction

133. Mr Albert spent three days in the custody of the police following Damian Ernest's death. He was charged with the murder of Damian Ernest on the 30th of June 2020, taken to the Magistrate's Court that very day and remanded to the Dominica State Prison. He was on remand for 3 years, 10 months and three weeks prior to pleading guilty.

134. Mr Albert must be credited with his remand time of 3 years, 10 months and three weeks.

Sentence

135. Mr Samron Thomas, for the murder of Damian Ernest for which you were found guilty, you are sentenced to life imprisonment.

136. Mr Marvin Albert, for the murder of Damian Ernest for which you pleaded guilty, after deducting the time spent on remand, of 3 years, 10 months and three weeks, you are sentenced to a term of 45 years 1 month and one week in prison, with effect from the 19th of April 2024 (the day that you pleaded guilty to the offence).

Colin Williams

High Court Judge

By The Court

Registrar