

**EASTERN CARIBBEAN SUPREME COURT
ANGUILLA**

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

**CLAIM NO: AXAHCR2020/0012
BETWEEN:**

REX

v

ATHELSTON ROGERS

Before: His Lordship The Honourable Justice Ermin Moise

Appearances:

Ms. Erica Edwards and for the Crown

Mr. Thomas Astaphan KC and Mrs. Tona Simpson Whyte for the Defendant

2024: February 24.

Decision on Sentencing

- [1] **Moise, J.:** On 23rd January, 2024, the defendant, Mr. Athelston Rogers (Mr. Rogers), was sentenced to time served having pleaded guilty to the offence of Manslaughter. Given the nature of the case, it was important to ensure that the reasons for the decision on sentencing were put in writing. I therefore undertook to do so and I do so now.

The Facts

- [2] Mr. Alister Rogers was shot and killed in his home on 6th December, 2018. There was never any dispute that Mr. Rogers was the one who shot him. What compounds the facts of this case, however, is that the defendant was the deceased's son. They lived together at Island Harbour, Anguilla and, according to the accounts presented to the court, had a somewhat strained and broken relationship.

- [3] Mr. Rogers was born on 19th July, 1987 in St. Kitts. His mother is Kittitian and his father Anguillian. At a very young age, Mr. Rogers began living with his father in Anguilla while his mother remained in St. Kitts. There was at that point a breakdown in the relationship between his parents. He was eventually raised by a paternal aunt and grandparents. He states that his father had contributed nothing positive to his upbringing. After sending Mr. Rogers off to live with his sister, the deceased had little interaction with his son and hardly ever spoke to him. Mr. Rogers states that whenever they did interact his father would verbally and physically abuse him.
- [4] Mr. Rogers did not initially have regular communication with his mother. She would enquire about his wellbeing through a third party. On occasion, however, Mr. Rogers was able to speak to his mother through a payphone. Mr. Rogers indicated that he would at times enquire about his mother. His paternal relatives would then refer to her in derogatory terms. Mr. Rogers would be told that his mother didn't want him.
- [5] Mr. Rogers recalls an incident in his youth when there was a dispute over custody between his parents. He recalls his mother trying to hold on to him. She was crying and was forced to let him go. Despite insisting on custody, the deceased never had much of a relationship with his son. Mr. Rogers recalls his father telling him that he would never amount to anything good. However, at age 24, Mr. Rogers was sent to live with his father by his aunt after they had an argument. According to Mr. Rogers' evidence, his father's abuse increased. He would express dissatisfaction with the new living arrangements and having to provide for Mr. Rogers. Mr. Rogers states that his father would hit him on multiple occasions for no good reason. He states that he lived in fear of his father during the time they lived together.
- [6] One silver lining, however, was that Mr. Rogers' relationship with his mother improved. They spoke more regularly now that he was an adult, and she became someone he could lean on, along with his brother. Nonetheless, the abuse at the hands of his father continued. Mr. Rogers obtained some respite from this when he moved to the United States to further his education at age 26. He obtained a Bachelor of Science Degree in Healthcare Administration at the Suny Brockport University, and also has an Associate Degree from the Monroe College. During summer breaks from school Mr. Rogers would work with the Department of

Education here in Anguilla. Mr. Rogers returned to Anguilla after his studies in 2018. He also returned to living with his father in Island Harbour. The abuse continued. Mr. Rogers described it as “living in hell.”

- [7] Mr. Rogers obtained employment with the Anguilla Health Authority as an accounting assistant, having done an internship with that department before. From all accounts, Mr. Rogers performed his duties well.
- [8] Mr. Rogers states that on the day of the incident, he was dropped off at home after work by his uncle. His father then began to abuse him. He slapped him across his face and said that he wished he had never been born. Mr. Rogers states that the abuse continued throughout the evening. Mr. Rogers went into his room feeling confused and very depressed. His father entered his room carrying a blue bag which he dropped on the floor. Mr. Rogers states that he had seen that bag a few days earlier. He examined the contents of the bag and noticed that it was a gun and ammunition. His father actually took the gun out. Mr. Rogers got out of his bed and ran out of the house.
- [9] Mr. Rogers’ father came out of the house and an altercation began. He was threatening to kill Mr. Rogers whilst cursing. Mr. Rogers states that he wrestled the gun away from his father and started to back away from him. Mr. Rogers’ account was that his father continued to state that he was going to kill him on that night. He fired the gun in fear for his life. Mr. Rogers states that he lost control and was scared. He is aware that his father was struck multiple times and succumbed to his wounds. He has expressed sorrow at what he has done.
- [10] This account of the incident was presented during the sentencing hearing. The crown presents no evidence to the contrary and the court accepts Mr. Rogers’ account as what transpired leading up to his father’s death. The evidence suggests that Mr. Rogers remained on the scene after the fatal shooting. The police arrived after a report was made around 9pm and met him there. He spoke with them and informed them that the firearm was on a chair on the porch. Mr. Rogers was then taken into custody.

Mental Health

- [11] Throughout the life of this case, various reports were commissioned from a number of mental health practitioners. There is therefore evidence before the court regarding Mr. Rogers' mental health. I note firstly that Mr. Rogers checked himself into the Hazen Center for Integrated Care at the College at Brockport. That was during his time as a student of that university. He suffered then with social anxiety and was under the care of a counselor for some time. He states that this anxiety began at age 15 or 16. Mr. Rogers was also at one point diagnosed with social phobia and post-traumatic stress disorder whilst he was in the US.
- [12] By way of medical report dated 29th November, 2020, Mr. Rogers was diagnosed with paranoid psychosis. The psychiatrist was of the view that this was brought on by the stressors associated with a recent court appearance in this matter. In the early stages of the proceedings, the court sought medical advice in order to assist in determining Mr. Rogers' fitness to plead. But there is sufficient evidence here to conclude that Mr. Rogers has had some mental health challenges over the years and that, on balance, these have been triggered by his anxieties and the emotional struggles he has had with his upbringing.

The Pre-Sentence Report

- [13] A pre-sentence report was filed with the court on 18th January, 2024. The report relays much of what Mr. Rogers had to say in his own affidavit. The report referred to an interview with Ms. Mavis Rogers, who is Mr. Rogers' aunt. She took on the role of guardian of Mr. Rogers from the time he was 5 months old. She speaks of Mr. Rogers' upbringing and that he was a quiet individual who preferred solitude. Mr. Rogers loved reading and showed intellectual promise as a child growing up. She encountered no significant problems with him during his youth. That was until an incident occurred during his years at secondary school which led to him being suspended. Mr. Rogers completed his secondary education at the Comprehensive Learning Center in North Hill, Anguilla as he withdrew from school after he was suspended. Ms. Rogers, as well as Mr. Rogers' father and uncle assisted in obtaining a loan to assist him in furthering his education in the United States.

- [14] Ms. Rogers indicated that she never witnessed violent behaviour in Mr. Rogers. She stated that at age 25¹ he moved in with his father. However, Ms. Rogers remained in contact with him and was able to provide support for him. She remembers Mr. Rogers indicating that he was unwell whilst he was away at university. She remembers sending money to him for medical treatment. It may be assumed that this related to Mr. Rogers' anxiety and the assistance which he voluntarily sought whilst in the United States.
- [15] During Mr. Rogers' time at His Majesty's Prison, he was initially reluctant to engage in activities. In time he became more active in discussion forums, movie nights and other regular events. He was described by the prison chaplain as being erudite, dignified and collaborative. He assisted in setting up and dismantling the equipment to assist with various activities in the prison. He read a lot and spent much time in literature and reading biographies. Mr. Rogers is also noted as having had a strong rapport with both prison staff and fellow inmates. He assisted with the education of inmates whilst in prison and often shared his personal items with them. Mr. Rogers abided by prison rules and had no behavioural issues during his incarceration. He also expressed remorse for the offence.
- [16] The pre-sentence report notes that Mr. Rogers had a pattern of physical altercations during his secondary school years. He had disputes with other students and persons in authority at the school. However, the report also points out that Mr. Rogers' separation from his mother and the absence of his father during his formative years led to him feeling unwanted by his parents. It was therefore concluded that there is potential risk of harm to the community. It is however underscored that this conclusion relates to behaviour displayed during Mr. Rogers' secondary school days. The overall level of risk is therefore described as being low. He has also been regarded as posing a low risk of re-offending.

The Sentencing Guidelines

- [17] Counsel for both sides are agreed as to the appropriate sentencing guideline to be considered; which is that of **"Manslaughter by Reason of Provocation"**. However, Mr.

¹ I note that Mr. Rogers' evidence indicates that he was 24 years' old when he moved in with his father.

Rogers' counsel has submitted that a slight deviation from the relevant guideline is necessary in order to do justice to the circumstances of this case. The court is asked to take into account the impact of the relationship with his parents, and more particularly his father as well Mr. Rogers' mental health issues.

[18] In step one of the guidelines, I consider firstly the consequences of the offence. This is a serious criminal offence. Mr. Rogers has pleaded guilty to shooting his own father. Alister Rogers is now deceased. In relation to the seriousness of the offence, counsel for both sides submit, and the court accepts, that this falls into category C. I note that there is some evidence here to suggest that Mr. Rogers intended to shoot his father. However, this came off the heels of evidence of abuse and provocation which occurred at the time of the offence. In fact, based on the evidence presented, it was the deceased who initiated the threat of violence with the very firearm which was eventually used in committing the offence.

[19] I go on to consider the aggravating and mitigating factors in relation to the offence itself. Apart from the fact that a firearm was used (a factor which I have already considered in the first stage of this process), I can find no further aggravating factor. The mitigating factors, on the other hand, are numerous and significant. Firstly, there has been consistent abuse by the deceased of Mr. Rogers. This abuse was part and parcel of what led to the events of the day in question. Secondly, I consider the fact that Mr. Rogers never attempted to flee the scene and remained on the compound after the incident. He was found by the police, and it was he who pointed out the location of the firearm to them. He appeared to have been cooperative with the police handling of the incident.

[20] I also consider the fact that there are no aggravating factors which relate to Mr. Rogers personally. The personal mitigating factors are however significant. I consider the overall breakdown in the relationship between his parents had certainly taken a toll on his own emotional and mental wellbeing. Whilst at university Mr. Rogers was concerned enough about his own mental health challenges that he sought professional help voluntarily. Prior to incarceration he was gainfully employed and appeared to have a more reserved and quiet disposition. Despite the challenges of his early years in Secondary school, he has educated himself. So much so that he assisted with the education of inmates during his time of

incarceration. His time in prison appears to have positively impacted that environment and this risk of reoffending is low.

- [21] Despite the fact that Mr. Rogers has pleaded guilty some 6 years after this incident, I take his guilty plea into account. However, I must make one observation at this stage. It has taken quite some time to obtain adequate assistance from a mental health professional to move forward with this case. This is a matter which should be addressed. Those who engage our justice system with mental health challenges sometimes find it difficult to navigate this process and we must ensure that there are adequate facilities to address those issues.
- [22] Taking all of those factors into account, the crown submits that the starting point for the appropriate sentence should be 12 years in prison with a range of 6 to 16 years considering the aggravating and mitigating factors. Mr. Astaphan KC on the other hand, argues that a starting point of 10 years with a range of non-custodial to 15 years is more appropriate.
- [23] However, in my view, I would take a starting point of 12 years as being the more appropriate and would agree that a 6 year sentence would be a reasonable sentence in normal circumstances such as these. However, I agree with the earlier submission put forward by counsel for the defendant that a slight deviation would be necessary in order to give effect to the significant mitigating factors in this case. Mr. Rogers has now spent 5 years and 1 month in prison. That is sufficient time for the nature of the crime he has pleaded guilty to committing. I therefore sentenced the defendant to time served. He is also ordered to continue mental health care under the supervision of a qualified mental health practitioner.

Ermin Moise
High Court Judge

By the Court

Registrar