

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

COMMONWEALTH OF DOMINICA  
DOMHCR2021/0007

BETWEEN:

THE STATE

V

DORIAN DAILEY

Before:

The Honourable Thomas W.R. Astaphan, K.C., J (Ag.)

Appearances:

Miss Sherma Dalrymple, Director of Public Prosecutions, assisted by Miss Daina Matthew and Miss Marie Louis Pierre-Louis, State Attorneys for The Commonwealth of Dominica

Mr. Darius Jones and Mr. Edward Peter Alleyne, Director of the Legal Aid Clinic, for the Accused

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2023: May 15, 16, 17, 18, 19, 22, 23, 24, 25

: July 19  
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**JUDGMENT ON SENTENCING**

***“And he who strikes his father or his mother shall surely be put to death.”***

*Exodus 21:15, The Bible, New King James Version, 2019 ed.*

***“Honour your father and your mother, that your days may be long upon the land which the Lord your God is giving you.”*** *ibid* 20:12

***“You shall not murder.”*** *ibid* 20:13

- [1] **THOMAS W.R. ASTAPHAN, K.C.; J (AG.):** On 25<sup>th</sup> May, 2023 a Jury of his Peers found Dorian Dailey, 29 years old, who was charged with Murder, Guilty of Manslaughter in the killing of his father, Maurice Murray Dailey, 62 years of age at the time of his death.
- [2] Fortunately for the Convict, the penalty prescribed by Exodus 21:15 is not available under the laws of the Commonwealth of Dominica for the offence of Manslaughter, notwithstanding the victim being his father.
- [3] In the early morning hours of Monday 9<sup>th</sup> January 2019, after a verbal altercation, the Convict took a machete to his father causing severe head injuries, amongst others, which proved fatal.
- [4] Thus, it was that Dorian Dailey, in one fell swoop, disobeyed one admonition, and breached two commandments of the Bible.
- [5] Section 6 of the **Offences Against the Person Act**<sup>1</sup>, reads: “6. *Any person who is convicted of manslaughter is liable to such fine as the Court may award and to imprisonment for life.*”
- [6] In the exercise of sentencing the Court is required to adhere to the principles of the object of sentencing established by the Court of Appeal of the Eastern Caribbean Supreme Court in the case of **Desmond Baptiste et. Al v R**<sup>2</sup>, and to the guidelines set out in **the Compendium Sentencing Guideline of the Eastern Caribbean Supreme Court Homicide Offences Re-Issue 26<sup>th</sup> November 2021.**
- [7] **Baptiste** establishes the following as the main objectives of sentencing:

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<sup>1</sup> Chapter 10:31 of the Laws of the Commonwealth of Dominica

<sup>2</sup> Crim App No 8 of 2008 (SVG)

- (i) **Retribution** – in recognition that punishment is intended to reflect society's and the legislature's abhorrence of the offence and the offender;
- (ii) **Deterrence** – to deter potential offenders from offending, and the offender himself from recidivism;
- (iii) **Prevention** – aimed at preventing the offender through incarceration from offending against the law and thus protection of society; and
- (iv) **Rehabilitation** – aimed at assisting the offender to reform his ways so as to become a contributing member of society.

### **The Guidelines**

- [8] Section 2 of the applicable Guidelines is headed “***Manslaughter by reason of Provocation.***”
- [9] The first stage requires an assessment of the seriousness of the offence and its consequences by reference to the harm caused.
- [10] To determine the offence category, one examines the consequence of the offence. In a case of manslaughter that consequence is death.
- [11] Then there is the Second Stage which is to consider the seriousness by assessing the culpability of the offender. It is necessary to quote this aspect of the Guidelines now under consideration:

“A sentence for manslaughter by reason of provocation means it has been found or accepted there has been a loss of self-control by the defendant. The intensity, extent, and nature of loss of that control must be assessed in the context of the provocation that preceded it. Culpability requires the court to determine the degree of provocation as shown by the nature and duration, and the extent and timing of the retaliation... The levels arising are as follows: Level A – a low degree of provocation, meaning higher culpability; Level B – a significant degree of provocation, meaning medium culpability, which can be low provocation cumulative over a longer period;

Level C – a high degree of provocation, meaning lower culpability, which can be significant provocation over a long period.”

- [12] It then goes on to give indicia the presence of which go to the seriousness level on the basis of the degree of provocation, ranging from Level A – High – low degree of provocation, through Level B – Medium – significant degree of provocation, to Level – C – Lower – high degree of provocation.
- [13] I am of the view that any ‘*credit*’ due to the offender on the provocation aspect of the offence has already been given when the Jury found him ‘*Not Guilty*’ of Murder, the maximum sentence for which is Death, but “*guilty of Manslaughter*”, the maximum sentence for which is life imprisonment. By virtue of the difference in maximum sentences, the Jury’s verdict has benefitted the Convict already by reducing the maximum sentence he faced from Death to Life imprisonment. This verdict was based upon evidence of provocation which the Jury clearly, by their verdicts, accepted. He has already received credit for the provocation.
- [14] Having therefore received a substantial benefit from the verdict on the lesser included offence, it would, in the opinion of this Court, be “*double-dipping*” if the Convict were to receive further credit for the provocation which has already reduced his verdict from Guilty of Murder to Guilty of Manslaughter.
- [15] That would make no sense. However, on the evidence before the Court, it is clear that, in any event, the Seriousness would be Level A – High, using the indicia set out therein. There was verbal abuse; the conduct of the victim was not extreme; the Convict had armed himself with a machete.
- [16] Therefore, according to the Guidelines, the Starting Point would be **Level A High seriousness and Death of the victim** (consequence) which is **30 years, with a range between 20 and 40 years.**

- [17] I note that the Guidelines do not contemplate the victim being a parent, sibling or child.
- [18] The Fourth Stage requires an examination of the aggravating and mitigating factors of the offence.

### **Aggravating Factors of the Offence**

- [19] The State submits that there are no aggravating factors of the offence. With this submission the Court can find no concordance.
- [20] The fact that the deceased was the father of the Convict is an aggravating factor. No amount of provocation ought to countenance an armed violent attack upon a parent, particularly, as here, where the Convict's own statement states that there was a gap in time between the initial confrontation between himself and his father, and the fatal attack. The Convict said that he had gone to sleep during this period. I increase the notional sentence from **30 years** to **32 years**.
- [21] Further, the blows inflicted upon the father by the son were inflicted to the head of the father with great force, causing fractures to the skull, with the brain being exposed. To add insult to injury, there were more than one blow to the father's head, inflicted by the son with a machete. This is an aggravating factor. The sentence is now increased to **34 years**.
- [22] Then, having brutally attacked his father with a machete, levelling crushing blows to his head, the Convict son left his father in a state of grievous injury and went on his way. He did not seek to assist his father, or to seek medical assistance for him. He left him bleeding from injuries savagely inflicted by him on his own father. This is an aggravating factor. The sentence is now **35 years**.

### **Mitigating Factors of the Offence**

- [23] There are no mitigating factors of the offence. I agree with the State's submission on this point. The evidence and circumstances disclose none.

### **Aggravating Factors of the Offender**

- [24] The Convict had, at the time of the commission of the offence for which he was convicted, two convictions for issuing threats. These convictions were handed down the year before on the 19<sup>th</sup> April 2016. This is an aggravating factor. The sentence is now **37 years**.

### **Mitigating Factors of the Offender.**

- [25] The State submits that the Convict assisted the authorities. What "assistance" he may have given appears to this Court to have been gratuitous, and minimal. However, in the interest of fairness, I will accord this the quality of a mitigating factor. The sentence is now reduced to **35 years**.

- [26] There is no credit to be given for a guilty plea.

- [27] The Convict is sentenced on one conviction and there is therefore no need to address the principle of totality.

- [28] Credit for time spent on remand is to be given. As at 11<sup>th</sup> July 2023 he has spent a total on 6 years and 2 months in remand prison. This, plus the 8 days between then and the date of this judgment being delivered are to be deducted from his sentence. His sentence is therefore 28 years, 9 months and 22 days in prison.

- [29] The Convict, Dorian Dailey is HEREBY sentenced to serve 28 years, 9 months and 22 days in prison commencing on the date of delivery of this judgment, Wednesday, 19<sup>th</sup> July, 2023.

[30] This is the Judgment of the Court.

**Thomas W.R. Astaphan, K.C.; J (Ag)**  
High Court Judge

**By the Court**

**Registrar**