

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE COMMONWEALTH OF DOMINICA**

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

CASE NO: DOMHCR2018/0016B

BETWEEN:

THE STATE

and

JERIMIAH GUSTAVE

Appearances:

Mr. Keith Scotland, and Ms. Sherma Dalrymple, Director of Public Prosecutions
and Counsel for the State

Mr. Kondwani Williams, Mr. Wayne Norde, and Ms. Laurina Telemacque,
Counsel for the Defendant

**2022: November 7th, 10th
December 2nd, 8th**

JUDGMENT ON SENTENCE

- [1] **FLOYD J.:** On 5th July 2017, Glen Joseph Alphonse was shot dead while riding on a public transportation bus in Eggleston, in the Parish of St. George. Rendolph Gustave and Jeremiah Gustave, are brothers. They were arrested on 13th July 2017, and were charged with the murder of Mr. Alphonse on 17th July 2017. They have remained in custody ever since. When this matter came before the court on 7th November 2022, an application was made for a Goodyear Indication. The case was adjourned to 10th November 2022 for that purpose. However, on that date, the application for a Goodyear Indication was abandoned and a guilty plea was entered to the charge of murder by the defendant, Jeremiah Gustave. The State applied to

sever the indictment, and on consent of counsel for the defence, the indictment was severed. A Social Inquiry Report and a Psychiatric Report were sought by counsel for the defendant, and counsel for the State. The case was adjourned to 2nd December 2022. The Psychiatric Report was obtained and filed on 25th November 2022. The Social Inquiry Report was obtained and filed on 29th November 2022. An Agreed Statement of Facts was filed on 8th December 2022. Oral submissions were received on 2nd December 2022 and on 8th December 2022. The matter now proceeds to sentencing of the defendant, Jeremiah Gustave.

The Facts

- [2] The death of Glen Joseph Alphonse appears, sadly, to be related to the theft of a motorcycle. On 2nd July 2017, a motorcycle that was owned by a friend of the deceased, disappeared from where it had been left, at the home of the deceased. In searching for the motorcycle, the deceased came to believe it had been taken by Rendolph Gustave and Jeremiah Gustave. A report of the theft was eventually made to the police. The defendant, Jeremiah Gustave, met with the deceased, in order to try and resolve the matter on 3rd July 2017. A confrontation between Mr. Alphonse and the defendant took place. The confrontation became physical. The deceased produced a handgun, cranked, or racked it, and pointed it at the defendant. When the defendant began to flee, the deceased produced a ripping iron and struck the defendant with it. The defendant ran, while being pursued by the deceased and another man. The defendant was forced to leave his own motorcycle behind to make good his escape. The encounter led the deceased to later make a threat to shoot the defendant and his brother, if the property was not returned.
- [3] Some time thereafter, information came to the attention of the defendant that the deceased continued to be armed, to be travelling in a motor vehicle, and acting belligerently towards the defendant and his brother. At one point, the deceased was said to have discharged his weapon into the air. All of this caused the defendant to become fearful for his own safety, and to arm himself.

- [4] On the day of the shooting, 5th July 2017, the defendants observed the deceased passing by in a bus. Each saw the other, and words were exchanged. The deceased shouted out the window, "*come, come, come,*" in the direction of the defendants. When the bus stopped to pick up passengers, the defendants, who were each armed with a long gun, ran towards it. They took positions, one on either side of the bus. There were passengers on the bus, including a mother and her nine-year-old daughter. There were people on the street as well. It was early afternoon. When the defendants reached the bus, Jeremiah Gustave pointed his firearm, a 12-gauge shotgun, through the window of the bus and fired. Mr. Alphonse was struck in the chest. The defendants fled the scene. Mr. Alphonse was given medical assistance, and was transported by ambulance to the hospital, where he was pronounced dead.
- [5] A post mortem was carried out by Dr. Yaima Breachers Muniz, on 14th July 2017. The cause of death was confirmed as being a gunshot wound to the chest. 30 shotgun pellets were recovered from the body of the deceased.
- [6] Both defendants were cooperative with police and provided statements under caution. Both told police where they put their guns after the incident, although only one firearm was recovered by police. Both defendants went with the police to the scene of the shooting. Jeremiah Gustave showed police where they were sitting when the bus passed by, and said that they had expected the deceased to be in a car. Jeremiah Gustave confirmed that both he and his brother were armed with guns at the time. With the help of the defendants, police located a Remington model 870 pump action 12-gauge shotgun, two cartridges and one empty shell. Jeremiah Gustave confirmed that the recovered shotgun was the one he used to shoot Glen Joseph Alphonse.
- [7] The Social Inquiry Report was prepared by Welfare Officer Anya Gage and Chief Welfare Officer Oliver Wallace. It confirms that Jeremiah Gustave is 26 years of

age with a date of birth of 30th March 1996. He was 21 years old at the time of this offence. The victim, Glen Joseph Alphonse, was born on 23rd March 1988. He was 29 years of age at the time of his death.

- [8] The defendant has six siblings. He lost his mother at a young age when she passed away. He was raised by his father, older sister, and grandparents. However, community sources revealed that the defendant lacked guidance and supervision in the home, and was often on the streets. Corporal punishment was experienced by the defendant at the hands of his father. Although he was described as a mild-mannered person, the defendant was also noted to have anger issues. Mr. Gustave admitted that he was an angry young man when he entered prison. However, the years there have mellowed him greatly.
- [9] The defendant failed to complete high school and referred to a negative peer group at the time. He has been a regular user of marijuana since his teen years. After dropping out, he experienced trouble with the law, which led to being placed on probation. While on probation, Mr. Gustave entered the *"From Offending to Achieving"* program. This provided him with skills in the hospitality sector, which in turn led to employment, both in food services and later, in construction. This achievement is indicative of an ability to benefit from rehabilitative programming. To his credit, the defendant plans on pursuing education, building a business, and raising a family in the community, once he has completed his sentence.
- [10] The victim, Glen Joseph Alphonse, is greatly missed by his family. A memorial service is held annually, in his honour. His father proudly informed the report's author, that Mr. Alphonse graduated from high school, and was employed in the family business. He was described as a quiet, peaceful person. It was confirmed that the defendant and the victim were known to each other from a young age. Ironically, the defendant was even known to assist the victim with repairs to his motorcycle. Sadly, the death of Mr. Alphonse was reported to have contributed to the loss of the family farm and business. Such was the devastation caused by this tragic crime.

- [11] The Psychiatric Report was prepared by Dr. Nadia Wallace, consultant psychiatrist at the Acute Psychiatric Unit. The defendant was examined on 22nd November 2022. He had no major psychiatric illness and no neurocognitive illness. He manifested no clinical feature of any medical illness. He was able to give a clear account of the criminal charge, understood his current life situation, the implications of the psychiatric assessment, and related court procedures. He was mentally stable at the time of the incident, and remains mentally competent. To the attending physician, the defendant appeared remorseful, taking responsibility for his actions. In the opinion of Dr. Wallace, the defendant is mentally fit to be sentenced by this court.

The Position of the Parties

- [12] Learned counsel for the State seeks neither a death sentence nor a whole life sentence. Instead, she submits that a determinate sentence is appropriate in this case, and refers to the **Compendium of Sentencing Guidelines of the Eastern Caribbean Supreme Court: Homicide Offences Re-Issue 26th November, 2021**. Reference is made to the use of a firearm and a degree of planning being present. A range of sentence of 20 – 40 years is submitted, with a starting point of 30 years. In oral submissions, however, and in answer to inquiries from the court, learned counsel for the State agreed that the use of a firearm would actually place the starting point at 40 years, with a range of 30 – 50 years, pursuant to **s. 6 of the Sentencing Guidelines**. This would serve to somewhat increase the range of sentence proposed below.
- [13] Aggravating factors pertaining to the offence as submitted by State counsel include premeditation, a lack of provocation, the use of a firearm (although that had already been considered above), and the public location of the incident. There was significant danger posed to members of the public. The assistance rendered to authorities by the defendant is a mitigating factor. This increases the sentence to 33 years, it is submitted.

- [14] In reference to the offender, State counsel submits that a lack of remorse is an aggravating factor, and refers to the defendant telling the author of the report that the deceased had threatened him and he was fearful for his life. Consequently, any other reference to being remorseful found in the report cannot be construed as being genuine. However, remorse is not actually an enumerated factor in that section. While genuine remorse is a mitigating factor, a lack of remorse cannot be construed as an aggravating factor. At best, it is neutral. State counsel submits that, although the defendant has a brief record, there are no relevant convictions and no convictions for violence. State counsel goes further and submits that the record is as a youth and therefore, there is no adult record for consideration here at all. This reduces the sentence to 30 years.
- [15] State counsel submits that a one third reduction in sentence for a guilty plea should be accorded and would result in a 20-year sentence. Recognizing that credit must be given for time served on remand, State counsel submits the sentence should be further reduced, resulting in a recommended sentence of 14 years and 9 months. State counsel urges the court to bear in mind the increased presence of firearms in Dominica, and their use in other murders.
- [16] Learned defence counsel submits that the court must follow the principles set out in the **Sentencing Guidelines** and **Practice Direction No. 3 of 2021**. Reference is made to the well-known case of **Desmond Baptiste et al v The Queen**¹, and also, to two other cases. The first is **The State v Edward Green**². In that case, the learned Justice Stephenson referred to the great range of sentences for the offence of murder in the region, from 7 years to life in prison. The other case referred to is **The Queen v Neil Wilson**³. In that case, the learned Justice Taylor-Alexander similarly recognized that sentences imposed for non-capital murder in the OECS jurisdictions vary between 18 years to life imprisonment. Although this court notes that the **Sentencing Guidelines** supersede previous case law,

¹ Cr. Ap. No. 8 of 2003

² DOMHCR 2012/0024

³ Case No. SLUCRD 2016/0373

- [17] Defence counsel relies heavily upon the negative interactions between the defendant and the deceased that led up to the murder. He describes it as provoking behaviour on the part of the deceased. He also quotes at length from both the Social Inquiry Report and the Psychiatric Report, and emphasizes the young age of the defendant at the time of the offence. In referring to the **Sentencing Guidelines**, counsel for the defendant agrees with State counsel in that a determinate sentence is appropriate. Reference is made to the use of a firearm but it is not a worst-case scenario. Therefore, a range of 20 – 40 years is submitted, with a starting point of 25 years.
- [18] In oral submissions, learned defence counsel goes further, and submits that, in the facts of this case, the court should depart from the **Sentencing Guidelines** and consider a starting point of 20 years. He submits that the defendant attempted to resolve the dispute amicably and had a quest for peace. It was only in desperation and out of fear, that the defendant armed himself. Defence counsel submits that the defendant is a simple man with limited education. On the day in question, he panicked. Learned counsel for the defendant agreed that the defendant did not report any of the trouble he was experiencing with the deceased to the police. However, he submits that the court should consider the fact that people of different backgrounds, socioeconomic and otherwise, react differently. Not everyone is comfortable in making police reports. The defendant, he submits, armed himself only for his own protection.
- [19] The court, however, struggles with that assertion. By arming himself, the defendant was only escalating the serious risk of harm to all concerned. Although defence counsel agrees that there was no imminent danger or risk to the defendant on the day in question, it was the deceased who provoked the confrontation by shouting out the bus window towards the defendant. He goes so far as to classify the deceased as the aggressor that day. However, it appears to the court that if the deceased did indeed shout towards the defendant, it was perceived as a challenge by the defendant who then, sadly, took up that challenge, and ran towards the bus.

The court struggles with the concept that the defendant was in fear for his life. For, rather than removing himself from potential conflict, he inserted himself further into it, by approaching the bus while armed.

[20] Defence counsel directs the court to the balancing exercise of mitigating and aggravating factors. With regard to the offence, he classifies the aggravating factors as the offence being committed in the public view, premeditation, and the use of a firearm (although that has already been considered above). In mitigation, defence counsel submits the factors include provocation, assisting or cooperating with the police, and the recovery of the firearm used. Although the last point would actually be included in the concept of assisting the police. As a result, defence counsel submits the sentence should be increased by 3 years and reduced by 3 years, bringing the starting point back to 25 years.

[21] Regarding the offender, counsel for the defendant submits that aggravating factors include the offence being committed in public view, and the use of a firearm. However, both of those factors have already been considered above. Mitigating factors include no previous convictions (good character), youth and/or lack of maturity, good prospects of rehabilitation, provocation (although that was already considered above), and classifying the victim as the aggressor. However, the last point, victim as aggressor, is actually a mitigating factor that should be considered in relation to the offence. As a result, defence counsel submits the sentence should be reduced to 22 years.

[22] Defence counsel submits that a one third discount for guilty plea is applicable, and would reduce the sentence by a further 7 years and 8 months. The total sentence would therefore be 14 years and 4 months. Finally, it is submitted that the time spent on remand of 5 years and 4 months must be deducted, bringing the recommended sentence to 9 years. In oral submissions, counsel for the defendant asked the court to go below that figure, given the revised starting point of 20 years.

The Law

- [23] Under **s. 2** of the **Offences Against the Person Act**⁴, upon conviction for murder in Dominica, the penalty is death. However, case law has modified legislation requiring the death penalty throughout the region. It is no longer a mandatory sentence for the crime of murder. The Caribbean Court of Justice has ruled in the case of **Jabari Sensimania Nervais v The Queen; Dwayne Omar Severin v The Queen**⁵; that the mandatory nature of death sentences is ultra vires the right to protection of the law. Indeed, in the **Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019, Practice Direction No. 2 of 2021, Sentencing for the Offence of Murder, Re-Issue 26th November 2021, s. 3**, indicates that sentence of death, where lawful for murder, may only be considered in certain cases. Thereafter, several considerations are set out. If the sentencing court determines that a death sentence is not appropriate, then it must move on to consider whether a whole life sentence or a determinate sentence is appropriate.
- [24] Sentencing in criminal cases involves many considerations in order to achieve the appropriate penalty. The sentencing goals of retribution, deterrence (both general and specific), prevention and rehabilitation, are confirmed in the well-known cases of **R. v Sargent**⁶ and **Desmond Baptiste et al v The Queen**⁷. The Caribbean Court of Justice in the case of **Renaldo Anderson Alleyne v The Queen**⁸ has gone further, and notes that a more modern formulation would refer only to the principles of punishment, deterrence, and rehabilitation. Sentencing seeks to promote respect for the law and an orderly society. Amongst considerations for the court are the facts of the case and the gravity of the offence, balanced with the characteristics of the offender, including his age and background, whether he has a criminal record, and the role he played in the offence. The court in the **Renaldo**

⁴ CAP 10:31

⁵ CCJ Appeals Nos. BBCR 2017/002; BB Criminal Appeal No. 7 of 2014; CCJ Appeal No. BBCR 2017/003

⁶ 60 Cr. Ap. R. 74

⁷ Cr. Ap. No. 8 of 2003

⁸ [2019] CCJ 06 AJ, 93 WIR 155

Anderson Alleyne case reminds us that, in murder cases, the sentencing judge must consider the personal and individual circumstances of the convicted person, the nature and gravity of the offence, the character and record of the convicted person, the factors influencing the conduct leading to the murder, the design and execution of the offence and the possibility of reform and reintegration of the convicted person.

- [25] The case of **R. v Parranto**⁹ confirmed that sentencing is one of the most delicate stages of the criminal justice process. It is more of an art than a science. Sentencing requires judges to consider and balance a multiplicity of factors. While the process is governed by clearly defined objectives, it remains a discretionary exercise for courts in balancing all relevant factors to meet the basic objectives of sentencing. The goal in every case is a fair, fit, and principled sanction. Sentencing is a highly individualized exercise, approached on a case-by-case basis. The court must determine which objectives of sentencing merit greater weight and evaluate the importance of mitigating or aggravating factors to best reflect the circumstances of each case.
- [26] All of this is borne in mind by this court in formulating an appropriate sentence in this case.

Analysis

- [27] Having received and carefully reviewed the written and oral submissions of both parties, the Social Inquiry Report, the Psychiatric Report, and the Agreed Statement of Facts, what follows is the decision of the court in sentencing. This was a very serious crime. A man was violently gunned down while riding on a public transport bus. Not only did someone lose his life, there was an enormous threat to public safety. The incident occurred in broad daylight in the early afternoon. People, including a child, were riding the bus. Other people were on the street in the vicinity.

⁹ [2021] SCC 46

The use of a firearm in this killing only serves to heighten the gravity of the offence. Gun crime is a great concern to the court, as indeed it is to the general public. It is a problem that is becoming more widespread. Although the proliferation of hand guns is a particular concern, and a long gun was used in this case, carrying and using a firearm of any sort, must be deterred. The use of firearms in the commission of offences presents a significant danger to the community, and instills general fear. A message of deterrence must be sent, that the commission of offences involving firearms will not be tolerated, and will result in significant terms of incarceration. As has been recognized by this court previously, this was clearly spelled out in a series of cases from the English Court of Appeal (Criminal Division), beginning with **R. v Wilkinson and Others**¹⁰:

The gravity of gun crime cannot be exaggerated. Guns kill and maim, terrorize, and intimidate. That is why criminals want them: that is why they use them... Sentencing courts must address the fact that too many lethal weapons are too readily available: too many are carried: too many are used, always with devastating effect on individual victims and with insidious corrosive impact on the wellbeing of the local community...As a matter of sentencing reality, whenever a gun is made available for use as well as when a gun is used, public protection is the paramount consideration. Deterrent and punitive sentences are required and should be imposed.

- [28] That message has been consistently reiterated, including in **R. v Meikiel Dixon-Nash**¹¹, which referred with approval to the dicta in the **Wilkinson and Others** case, stating: *“This explains why the policy of the law is intended to reflect a need for deterrence; sentences for gun offences will be severe.”*
- [29] In crafting this sentence, the Court has relied upon the general provisions of the **Eastern Caribbean Supreme Court Sentencing Guidelines for Homicide Offences**. At s. 2, the **Guidelines** indicate the sentences available for murder. There is no evidence here of insanity or mental illness. A psychiatric report was

¹⁰ [2009] EWCA Crim 1925

¹¹ [2019] EWCA Crim 1173 at para 16

obtained and the defendant was found mentally fit to be sentenced. While a death sentence is lawful, for reasons that will be set out, it is not applicable in this case.

[30] While under **s. 3**, the sentence of death is indicated, the court is satisfied that it should not be imposed in this case. Although the defendant was an adult when he committed the offence, a guilty plea was entered and no trial took place. The court is satisfied that, while the facts are very serious, they do not fall within either the “rarest of the rare” or the “*worst of the worst*.” There certainly appear to be prospects for the reform and rehabilitation of the defendant, particularly given his age. He is still a young man. As noted previously, the defendant has been evaluated by a psychiatrist and found to be mentally fit, both at the time of the offence, and today. The court is satisfied that the objects of punishment can be achieved by means other than a sentence of death. That leaves either a whole life sentence or a determinate sentence.

[31] At **s. 4**, a whole life sentence may be appropriate where the court considers the seriousness of the offence to be exceptionally high, and the offender was an adult when committing the offence. Fifteen examples where the seriousness of the offence could be considered exceptionally high, are set out at **s. 5**. None of those examples, the court is satisfied, apply to this case. Therefore, a whole life sentence does not arise.

[32] As a result, the sentence in this case will be a determinate one. **Section 6** of the **Sentencing Guidelines** must then be referred to. The appropriate starting point is found to be 40 years, with a range of 30 – 50 years. Examples of cases that would fall within that category are set out at **s. 7**, and include, at **s. 7(b)**, a murder involving the use of a firearm. That is the situation here. The range of sentence for this case is therefore 30 – 50 years, with a starting point of 40 years. A firearm was used in broad daylight in a public place. The defendant was an adult. The court, having reviewed the **Sentencing Guidelines** and the facts of this case, is satisfied that a starting point of 40 years is appropriate.

- [33] Having established a starting point of 40 years, the court must go on to consider the aggravating and mitigating factors pertaining to both the offence and the offender. Aggravating factors pertaining to the offence are set out at **s. 12** of the **Guidelines**. Several of those factors are applicable to this case. Although some degree of planning occurred here, with the defendant arming himself before encountering the victim, the court would not characterize it as a significant degree of planning. Similarly, while there was no provocation by the victim on the day, there appears to have been history between the victim, the defendant, and his brother, arising out of the loss of a motorcycle and the resulting ill will. The victim had, days prior, drawn a firearm on the defendant and struck him. Nonetheless, the discharge of a firearm into a public bus transporting, not only the victim, but other citizens, including a 9-year-old child, in the presence of other people on the street nearby, constitutes an enormous risk of death or injury to others. The offence occurred in the early afternoon, on a public thoroughfare. It was committed in the presence of at least one child, in public view. All those factors are aggravating, and increase the sentence by 5 years, to 45 years.
- [34] In mitigation, factors to be considered are enumerated at **s. 13**. In this case, it includes the assistance given by the defendant to the authorities. He cooperated with police by providing an inculpatory statement, and directing police to the location of the firearm used in the murder. This serves to reduce the sentence by 3 years, to 42 years.
- [35] The court then moves to the consideration of factors that pertain to the offender. None of the aggravating factors found in **s. 14** apply to the defendant. There are no prior convictions for violent offences and no relevant convictions for other offences that would impact this sentence. This offence was not committed while the defendant was on bail.
- [36] As to mitigating factors regarding the offender, the court looks to **s. 15**. The defendant has a minor, unrelated criminal record that he generated as a youth. He has no record as an adult, prior to this incident. Therefore, good character is a

consideration. More importantly, the defendant's youth and lack of maturity at the time of the offence, and indeed even now, are mitigating factors. The defendant must be viewed as having good prospects of rehabilitation, again, particularly because of his age. The contents of the Psychiatric Report and the Social Inquiry Report indicate that the defendant displayed a demonstrable degree of regret and remorse for what he had done. The court accepts that as being a sincere expression of remorse. For all of these reasons, the sentence is therefore reduced by a further 3 years, to 39 years.

[37] Despite the passage of time, the court is prepared to grant the defendant a one third reduction in sentence, in recognition of his guilty plea. This reduces the sentence by an additional 13 years, to one of 26 years.

[38] The defendant must also receive credit for time spent on remand. The prison service has presented a record of incarceration for the defendant of 5 years, 4 months, 1 week, and 5 days, up until 1st December 2022. The defendant was, however, arrested and detained four days earlier, and we have moved forward since the date of record. Therefore, the court will reduce the sentence by a further 5 years and 5 months, leaving a sentence of 20 years and 7 months.

[39] For all of these reasons, the defendant, Jeremiah Gustave, is hereby sentenced to a period of 26 years imprisonment for the murder of Glen Joseph Alphonse. Taking into account the time he has served on remand, and giving him full credit for that, the sentence imposed is reduced to 20 years and 7 months, as of today's date.

Richard G. Floyd
High Court Judge

By the Court

Registrar