

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

IN THE FEDERATION OF ST CHRISTOPHER & NEVIS

ON ST KITTS

CASE SKBHCR 2022/0004

REX

V

MICHEL NICHOLAS

APPEARANCES

Ms Greatess Gordon-Hazel, acting DPP, with Mr Tessaun Vasquez, and Ms Terrilyn Hunte for the Crown.

Ms Marsha Henderson and Ms Britney Jeffers for the defendant.

2022: OCTOBER 31

SENTENCE

For smothering grandmother, as manslaughter by reason of diminished responsibility

- 1 **Morley J:** The defendant Michel Nicholas aged 32 (dob 21.02.90) was tried by jury on 14-21.06.22 and convicted of smothering on 03.06.18 his bedbound grandmother Iona aged 82 by placing his hand over her mouth and nose. The issue in the case had been whether Michel had killed Iona¹. Though charged with murder, there was psychiatric evidence he was a

¹ The parties will be referred to for ease of reading by first names to avoid confusions over family nomenclature, and no disrespect is intended by not writing out the legalise of whether victim, or defendant, or other legalese or formality.

schizophrenic, so that the Crown only sought a conviction for manslaughter by reason of diminished responsibility, which the jury returned.

The facts

- 2 The evidence showed Michel had a good relationship with Iona, who in addition to not being mobile it appears had mental health issues. However, at around 14.00 in the afternoon of 03.06.18 he was seen by his mother Patricia to be putting her in a car wrapped in a blanket. When challenged, he said she had to go to hospital as she was not breathing. Believing Iona still alive, Patricia ordered her taken back to her bedroom. The family realised she was dead and assistance was called. Michel said he would hang himself, which at that time was thought a reflection of his anguish Iona had passed. He went for a drive with his brother Tyrique and asked for a gun. He was behaving erratically. He went to Basseterre police station, it seems to turn himself in, but his courage failed. He confessed to Tyrique he had killed grandma, he did it for the family, explaining he was feeling pressed, as 'people' were telling him to do a burglary, and he would be killed if he did not kill his daughter Zamia, at the time aged 6. Driving back home at around 18.00, he met Patricia, to whom he confessed as well, saying he had placed his hand over Iona's mouth and nose, later supported separately and exactly by the pathologist as the cause of death. Patricia said what Michel had done 'selfish' (which struck the court as an unusual response). He then drove off, later driving over a cliff on the South Peninsula, though merely hurt his head, the car being recovered later by police at 05.45 on 04.06.18. Meanwhile, he walked to Frigate Bay police station, confessed the killing at 01.45, was taken to Basseterre police station, and when questioned at 08.30 at this point denied the killing, saying he had confessed because afraid, though did not say of what. When charged with murder on 07.06.18, he said, *'me aint do this so I don't know why I getting charged for this'*.
- 3 At trial he gave no evidence. Counsel Henderson, defending, skilfully explored whether his admissions could be relied on. In the end, the jury were sure he smothered Iona. As to the reason why, this appears rooted in his suffering an abnormality of mind.

Shizophrenia

- 4 Shortly after his arrest, in August 2018 Michel was examined by a psychiatrist, Dr Tania Sanchez Fajardo. She produced a court report dated 01.03.22, exhibited to the jury. She noted on examination, inter alia:

Patient history. Cannabis use since 11-13 years...

Mr Nicholas has been assessed by me for the first time in 2018 while admitted to the JNF Hospital due to depressive symptoms, delusional ideas with reference to religious content, auditory hallucinations, and sleep disorders. At the time he was in police custody.

Subsequently, this patient has been followed in a psychiatric clinic in prison where he has displayed a distrustful attitude, has maintained auditory hallucinations, flat affect, has reported that his thoughts are controlled and commanded by something but he cannot define if it has been by people or something else; he also affirms that which controls him does not allow him to have a restful sleep.

Diagnosis - Schizophrenia

Treatment - Risperidone 1mg

This entity is a chronic mental disorder that can be inherited or appear because of using hard drugs at a very early age.

Diagnostic criteria

- A. Two or more of the following, each present for a significant portion of time during a one-month period...At least one of these must be 1, 2, or 3:
 - 1 Delusions
 - 2 Hallucinations
 - 3 Disorganised speech
 - 4 Grossly disorganised or catatonic behaviour
 - 5 Diminished emotional expression or avolition...
- C. Continuous signs of the disturbance persist for at least 6 months...
- E. The disturbance is not attributable to the physiological effects of a substance (eg drug abuse, or medication), or another medical condition.

- 5 The approach taken at trial has been Michel was hearing voices to kill his daughter, or he would be killed, and under this pressure it appears he killed Iona instead, to whom he was close. He then tried to kill himself. Hearing voices persisted, which were trying to control him, noted by Dr Sanchez, who diagnosed schizophrenia, and prescribed anti-psychotic medication, namely risperidone, to stop him suffering delusions. It is unclear whether Michel

has inherited a mental health condition, there being some suggestion of it inherent in his family, noting Iona's mental condition and Patricia's response to confession, or whether it has been disease created by smoking cannabis from an early age, 11, but either way, his condition has been clinically diagnosed as an abnormality of mind arising at the time of the killing, from disease or inherent causes, and not induced on the day or generally as an adult by voluntary cannabis intoxication.

- 6 The Crown has taken the view, though the killing apparently deliberate, Michel was suffering such abnormality of mind as to justify diminishing his responsibility from murder to manslaughter. Diminished responsibility is a partial defence to murder, arising under **s69 Criminal Procedure Act Ch 4.06**:

Where a person kills...another, he...shall not be convicted of murder if he...was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his...mental responsibility for his...acts...in doing...the killing.

- 7 Schizophrenia is well established as capable of being such an abnormality, here manifested as hearing voices commanding action, accepted by the psychiatrist as not a fiction, and in all the circumstances of the report of Dr Sanchez, dated 01.03.22, the Crown accepted this substantially impaired his mental responsibility, meaning though he would be guilty of murder if of sound mind, here he should instead be convicted of manslaughter.

Sentencing powers

- 8 In assessing how to sentence Michel for manslaughter by reason of diminished responsibility, there is no legislation on St Kitts equivalent to the UK **Mental Health Act 1983**, which might allow for Michel to be detained under a 'hospital order with restriction', per **ss37/41**, so that there he would not be released from a secure psychiatric hospital without the approval of two doctors and the Home Secretary. Moreover, on St Kitts there is no psychiatric hospital, only a designated ward at the general JNF hospital, not expecting long term restriction of liberty.

- 9 There is instead on St Kitts the **Lunacy and Mental Treatment Act 1956 (as amended, cap 9.14)** to consider, which by modern standards is old law. This allows under magistrate authority for mental health to be assessed, on St Kitts at the JNF hospital ward, or referred to Antigua where there is Clarevue psychiatric hospital. Indefinite incarceration may theoretically arise, if after assessment a person is adjudicated by the magistrate to be of 'unsound mind', to be kept in a 'licensed premises', though it appears to this court there are currently no such long term licensed premises, apart from the hospital, which as above, is not designed for long term residents, and the Arthur Lake Centre which is only for mental health day-treatment, leaving only the prison as a place to detain long term the mentally ill.
- 10 It is a weakness within the Federation there is no statute for the High Court to sentence a person who commits a serious crime, because and where mentally ill, to detention in a psychiatric hospital, nor separate facility to keep him. There is only a prison sentence available, weighing how serious is the offence, and how dangerous is assessed a defendant he may commit serious offences again, against which to measure the sentence length.

Current mental health

- 11 Concerning Michel's current mental health, there was then a further report prepared by Dr Sanchez dated 07.07.22.

Nicholas was assessed by me for the first time in the medical ward at the JNF Hospital in August 2018 due to a psychotic disorder with a schizophrenic spectrum; he proposed seeing and hearing spirits; he also said that when he watched religious programs through the tv, the content seemed to relate to him. He also reported feeling depressed. The patient used marijuana in unspecified quantities.

Subsequently Nicholas has had monthly follow-up throughout his stay in prison, not showing symptoms that could maintain the diagnosis of a schizophrenic disorder; occasionally he has reported sleep disorder and auditory hallucinations, but we observe that these have been inconsistent over time and this patient has been with very low doses of antipsychotics, or none due to his refusal to take them.

Last mental exam – 05.07.22

Sensoperception: none.

Thought: no disorder in the course and content.

Affectivity: according with mood.

Appetite: normal

Language: philosophised.

Mood: irritability sometimes.

Sleep: insomnia

Behaviour: no aggressiveness, no violence, no mannerism.

Cognitive function: alert, good memory, attention, concentration, comprehension, and orientation.

Judgment: present.

Reliability: history is reliable.

Insight: total insight.

Conclusion:

Due to not gathering all the necessary information from the family and school from his childhood and adolescence stage, we are of the opinion that we cannot suggest a personality disorder is exhibited in Michel Nicholas; however, we do believe that traits of personality disorder are exhibited in him, due to his manipulation disguised with superficial charm and sophisticated language, showing himself as a victim trapped in a mental disorder.

Current diagnosis: antisocial personality disorder?

Recommendation: Nicholas must be monitored by psychiatry and counselling.

- 12 This subsequent report led to further court enquiry on zoom to the hospital on 11.07.22, when two psychiatrists addressed the court, Dr Tania Sanchez as originally, and also Dr Victoria Sanchez working alongside. The issue was whether the schizophrenia diagnosis had changed.
- 13 The upshot of the review was Michel over time on remand in prison under risperidone medication has recovered from schizophrenia symptoms, made further possible by his not having access to cannabis, and it is now more accurate to report he has an 'anti-social personality disorder'. This disorder has often been observed by the court in his complicated use of language and disposition to be contrary, distrustful, and pedantically argumentative, confirmed by his defence counsel. Pressed on his condition at the time of the killing, the psychiatrists maintained he had then been suffering an abnormality of mind, being schizophrenic auditory hallucination, such that the Crown takes the view, with which the court agrees, Michel's circumstance has evolved so that he can today be sentenced more routinely, as a person no longer mentally ill, but who was at the time.

Reports to the Court

- 14 His contrary nature led to him not cooperating with the social inquiry report prepared on 13.10.22 by Probation Officer Trevicia Clarke.
- a. She reported how difficult the case has been for his family, where a mother has given evidence against her son over the death of her mother, such that she feels she has lost both.
 - b. It was further much remarked on how Michel's actions have come as a shock to those who know him, in particular the mother of his child Cherane Fyfield, an employer Valentine Fraites, and family friend Kazrano Gumbs, all of whom describe him as quiet, honest, reliable, and respectful.
 - c. What was not possible in the report, though sought by the court, was a comprehensive review of the mental illness history of the whole family, across the four generations, which is suspected may be wider than just Michel and Iona.
- 15 In her separate victim impact statement dated 20.10.22, Patricia explained how her health has been affected, she is now hypertensive, and she wants the proceedings to be over, so she and the family can move forward, saying,
- ‘I really want this thing to be over with so I can get some peace, it ain't easy... I miss him [Michel] coming into my room to sit and talk. It is very hard for me to overcome the situation but by the grace of God I will overcome it. I love my child but the incident has already happened. I have forgiven him, I left everything in the hands of God. I do not know what possessed Michel to do what he did, only God knows, but I leave everything up to God. I loved my mother dearly.’
- 16 Sentence was listed for 21.10.22, when mitigation was discussed with Counsel Jeffers, but it was decided it may be helpful if Patricia might give evidence before the court, to explore what was meant by her forgiving Michel, which she then did on 24.10.22, with sentence adjourned to today 31.10.22 for remarks to be in writing. In evidence she said:
- a. She repeated she had forgiven Michel;
 - b. She loved her son;
 - c. She would remain in contact with him;
 - d. He should not live again in the house, as it was where the smothering happened, and she was uneasy what he might do, adding wryly *‘an ounce of prevention is better than a whole pound of cure’*;

- e. Her older sons Alexis and Shenard by a different father remain very upset with Michel;
- f. She had no suggestion as to sentence, leaving it wholly to the court, and God, accepting and expecting Michel should be punished.

Constructing the sentence

- 17 Clearly this is a most delicate sentencing exercise. An elderly vulnerable lady was smothered on her bed by her grandson, then suffering mental illness, now recovering, where his brother gave evidence against him, and his mother too, who has gone on to say she still loves him, and has forgiven him, though offers no exhortation to the court as to sentence.
- 18 In the Federation, the maximum sentence for manslaughter is life imprisonment, under **s5 Offences against the Person Act** (cap 4.21 as amended).
- 19 In the Eastern Caribbean Supreme Court, since November 2021 there are sentencing guidelines for murder, and for manslaughter, for example by reason of provocation, though none for where diminished responsibility arises. Moreover, this is a case where no guideline realistically could ever cleanly apply as it turns on unusual facts.
- 20 The approach of the court will be as follows:
 - a. Michel will be sentenced as no longer suffering abnormality of mind;
 - b. At the time, suffering mental illness, commanded by auditory hallucination, the killing was deliberate, meaning he intended to kill Iona, not just to cause her really serious harm, so that he would rightly be convicted of murder but for his abnormality of mind giving him a partial defence, reducing the crime to manslaughter;
 - c. Michel understood what he had done, confessing, showed remorse by wishing to turn himself in, and tried to kill himself;
 - d. However, he later tried to avoid culpability, knowing what he had done, so pursuing trial, not plea;
 - e. Michel's family remain wary of him, but he will not be cut off, and his mother has forgiven him, missing him, leaving sentencing to the court;
 - f. He has an anti-social personality disorder and requires psychiatric monitoring;
 - g. Indeed, his behaviour has been noted by the court as contrary, such as to manifest he suffers palpable mental ill health; and

- h. A question will be whether Michel remains dangerous.
- 21 During discussion of the case on 21.10.22, bearing in mind Michel was to be sentenced as no longer suffering abnormality of mind, the court examined the guidelines on provocation manslaughter on the notion, not directly analogous, the auditory hallucinations were akin to a provocation to Michel causing him in a sense to lose his self-control. This begs whether, concerning categories, the voices were akin to 'low', 'significant', or 'high' provocation. On the one hand they commanded his action; on the other, he knew he was doing wrong as he was quick after to say he would hang himself. The tension between these two extremes would arguably place the offence within the median category, of 'significant', with a starting point of 20 years. Reflecting on this, the question arises if this figure is too high or low, bearing in mind as stated, the comparison not analogous. In my view, this starting point fits the criminality, balancing the killing was deliberate, there being an intention to kill, in a knowledge of wrongdoing, yet while in the grip of mental abnormality, now recovering.
- 22 Alternatively, if analogous to the murder guidelines, the starting point would be 25 years under **para 10 Practice Direction 8E of 2021**, on sentencing for murder, where no weapon was used, then of course reduced owing to abnormality, so again the starting point of 20 years is arguably appropriate when applying this different perspective.
- 23 Concerning step 1 of constructing the sentence, namely features of the offence, the starting point being 20 years, in my judgment the sentence increases owing to the intense vulnerability of Iona and abuse of a position of trust, where bedbound she relies on her grandson for assistance, by 10 years, to 30 years, though then reduces 3 years to 27 years, owing to evident remorse at the time by attempting suicide.
- 24 Concerning step 2, namely features of the offender, Michel was of good character, which can reduce the sentence by one year to 26 years.
- 25 Further under step 2, it is a feature of the offender the offended are his family, where his mother has forgiven him, the daughter of the victim, still loves him, misses him, and in time will wish to interact with him. In my judgment, this unusual aspect allows for a further reduction of 5 years to 21 years.
- 26 Concerning step 3, there is no credit available for plea.

- 27 Concerning step 4, considering dangerousness, the court must assess if there is a significant ongoing risk of serious harm to any member of the public by the commission of future similar offences. "Serious harm" means death, or serious personal injury, whether physical or psychological. If so, this may warrant extending the sentence. However:
- a. Here there is no report to show he is dangerous; and
 - b. To the contrary, the psychiatrists say his mental health has improved on medication and monitoring, such that abnormality has receded.

In my judgment, I cannot be sure Michel continues to be dangerous, and his family's wariness does not amount to it, while there is no evidence having an anti-social personality disorder raises significant such risk, so that the sentence should not be extended further.

- 28 Time on remand, at any time for this offence, shall count, to be calculated by the prison, noting Michel was at one point charged with murder, kept in custody, the proceedings later stopped, he was again at liberty, and then they renewed so that he went back into custody.
- 29 It follows therefore the sentence of this court, for the reasoning offered, is 21 years imprisonment, where Michel will be eligible for remission of his sentence if of good behaviour having served two-thirds, namely after 14 years.
- 30 *Michel Nicholas, please stand up.* For the reasons I have explained, for smothering your grandmother Iona on 03.06.18, placing your hand over her mouth and nose, while suffering schizophrenia with auditory hallucinations commanding your actions, diagnosed by Dr Tania Sanchez as not self-induced, now recovering under medication and monitoring, so that you have been convicted after trial of manslaughter by reason of diminished responsibility, where at the time of smothering you showed remorse, knowing you had done wrong, though later tried to avoid culpability, your mother and family today still offering some support, the sentence shall be 21 years imprisonment. Time on remand shall count. You shall be eligible for remission of the sentence if of good behaviour having served two-thirds, namely after 14 years. You may go with the gaoler.

The Hon. Mr. Justice Iain Morley KC

High Court Judge

31 October 2022