

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ST CHRISTOPHER & NEVIS CIRCUIT

ON ST KITTS

CASE SKNHCR 2021/0011

REGINA

V

ORVIS POGSON

APPEARANCES

Mr Teshaun Vasquez and Ms Terrilyn Hunte for the Crown.

Mr Jason Hamilton for the defendant.

2022: OCTOBER 19

SENTENCE

For double murder

- 1 The defendant Orvis 'Java' Pogson, now 39 (dob 11.04.83), was on 06.07.22 convicted after trial by jury of two murders in Keys on 01.03.18, namely of his girlfriend Naomi 'Hopie' Finch aged 19, and then later that day, separately, her sister Jimmyliah 'Sunshine' Finch aged 20. Following reports gathered, he falls for sentence today.
- 2 Concerning this double murder, the evidence disclosed:
 - a. Naomi wished the night before to bring their 'rocky' relationship of about three years to a close.
 - b. Pogson visited Naomi at her parental home in the morning, greeting her parents, as usual, and he then went with her to a nearby beachside ghaut where they farmed

together. There, he tied her hands, strangled her with such force he broke her hyoid bone and thyroid cartilage, dragged her over rocks, scraping her face exposing bone and fracturing her skull base. She was barely still alive when family later found her, but succumbed at the scene.

- c. Meanwhile, leaving Naomi for dead, Pogson then went back to speak to Jimmyliah, who was the mother of a son aged 2 months, taking his machete, obtaining permission with smiles at the back door again to enter the home from her mother Desiree Elliot, and stepfather Elvine Elliot, who observed him in the house seeming surprised the parents were home, as they had been out earlier. Pogson locked Jimmyliah's bedroom door, which she shared with Naomi, and they talked for about 15mins, though the parents interrupted as they wanted the door unlocked. Jimmyliah borrowed shorts from Elvine, and innocently accompanied Pogson to the ghaut, where he then hacked her 28 times, first to her front, then as she fled, to her back, amputating her right hand, and on collapsing to the ground, with a single final blow almost completely decapitated her.
- d. Pogson then went to a shop, calmly bought nuts and a malt, asked to call police as he had done something seriously wrong, confessed he had killed someone, and directed police to the scene. In custody, he relied on advice from his lawyer and received medication for dizziness, headaches, back pain, and an upset stomach.
- e. Though he gave no evidence at trial, from his history disclosed to a psychiatrist he committed these offences under the influence of cannabis he had taken voluntarily.

3 At trial, he did not give evidence, and the defence sought to show Pogson's responsibility for the killings was diminished owing to suffering an abnormality of mind. On 12.04.22, he had offered pleas to manslaughter. Psychiatrist Dr Isben Williams gave evidence he diagnosed Pogson suffering a major depression with suicidality, cannabis abuse, and persecutory delusions. The trial explored his analysis, noting diminished responsibility is a legal concept, not a medical diagnosis, and lay in the decision of the jury, with the burden on the defence to prove it to a balance of probabilities. The defence failed.

4 Mitigation was considered on 10.10.22, with sentence delayed to today 19.10.22 for remarks to be in writing. The death penalty was on 06.07.22 not sought by the Crown, and the primary sentencing issue has been agreed to be whether the sentence should be to a whole life term.

- 5 Pogson has never tried to explain why he killed Naomi and then went back to kill Jimmyliah. Through his counsel, and to the psychiatrist, it has been asserted he was disconnected from events, and psychotic, with no clear memory. If this is true, then he presents a continuing grave risk to others, as it would be reasonable to suppose he could do this again in a similar state; and worse, if a lie, and he does remember, then he has shown no remorse for two murders, separated in time and method, involving great brutality and inflicting terrible suffering.
- 6 Having observed the trial, the court is sure he smoked cannabis, well known to be capable of causing paranoid and persecutory delusion, and in this state of voluntary intoxication, he killed Naomi to punish her for wanting to leave him, and he went back for Jimmyliah to punish her he thought for encouraging Naomi. The strangulation of Naomi was after her hands were tied, showing calculation; and the machete assault on Jimmyliah was sustained, with great violence, there being 28 blows, with an aimed full force decapitation blow to the neck, having lured her to the scene to see what he had done to Naomi. From how he behaved, in the final moments, both girls will have been horrified to know, with premeditation, he intended to kill them and each was powerless to stop him, Naomi with her hands tied, Jimmyliah being attacked first frontally with the machete.
- 7 In her lengthy moving victim impact statement, describing the vibrancy of her daughters' lives, and their potential, Desiree also said:

Java did not have any rights to kill my children. Their deaths were very inhumane. Their deaths have caused me much pain and turmoil over the years. I have difficulty sleeping through the nights. I have seen several doctors and have been placed on medication to help me sleep. The medications are not working. As a result of the ordeal, my health has deteriorated. I have developed hyper tension and diabetes. My heart is now affecting me. I had asthma before but the ordeal has made it worse. I now have to walk with a mesh nebulizer machine everywhere I go in the event I get an asthma attack. I have to take medication for my nerves because I am always shaking. The only time I would get some sense of relief is when I go to the cemetery. I go to the cemetery at least three times per day from since the ordeal. I frequently talk to them just to see how their day is going. I does cry every day....I am happy with the verdict, but I am still not happy because even though he was convicted of killing my girls, it still can't bring them back. It is like he is getting to live his life and his family is getting to see him but I lost my children. He had no right to kill anyone of my children. I don't think that he deserves to be living. He should not be alive at all. He needs to be slaughtered in the same way that he kill my children. This is not justice. They did not do him anything. He don't deserve no life in prison. It is hard to know that my children them are dead and he still alive.

- 8 In the helpful social inquiry report of 06.10.22 by Probation Officer Kishma Huggins, she records what Pogson told her about the offence:

I don't recall all the particulars of the offense because of my mental state at the time. But I am 100% sure that if I was in my correct state of mind, committing those acts would have been highly unlikely. I genuinely cared for Hopey and Sunshnie. Years after, I am still in deep regret about the incident that took place. I am still uncomfortable speaking about it, and I am still trying to deal with the reality that this incident actually took place. I am still trying to piece together what I can remember to figure out how the situation got so far. I have always been a community-minded and helpful individual. I always tried my best to stay out of trouble and was actually looked to by my peers for conflict resolution due to my normal level-headed nature. So, committing these offenses is just as much a shock to me as it is to my community, and it is a constant pain I have to deal with every day. It is also a great pain for me when I consider how much pain I have caused to their families, especially their mother Desiree since we had a very close relationship. Many times throughout the trial I wished that I could have consoled her, but I had to deal with the reality that I was the one who caused her the pain. I would like them to know that I never meant to cause harm and my intentions to help were sincere. I do pray and hope that in time most of the wounds I have created will heal. I am also very concerned about Sunshine's son. I do hope that he does not grow to hate me and that he understands that I really had no control at the time. I really messed up. I do understand however he may not understand or forgive me, and so too Desiree. I myself am still struggling with forgiving myself. I don't know how I got to this point in life after trying so hard to avert danger and conflict. I feel as though I have let down so many people, some that I have never even met, and also myself and my community. I have been trying my best since I have regained some level of normal functioning to see how best I can become useful once more to my community and even my community here inside the prison. I have been trying to stay active and positive so that I do not lapse too far into self-pity and self-hate. I do really wish that things had gone differently but I do know that I must accept the reality of the situation and try my best to cope and repay this great debt that I owe to the family members of Hopey and Sunshine and to society on the whole as best I can.

- 9 What is striking in what Pogson says is how he minimizes his culpability:

- a. He never refers to killing or murder;
- b. He expresses surprise at his actions;
- c. He is uncomfortable speaking about what he did;
- d. He imagines he can console the girls' mother;
- e. He imagines he may be forgiven by their family;
- f. He wishes to forgive himself; and
- g. He thinks he has merely let people down.

- 10 These expressed thoughts are disturbing as failing to show appreciation for the scale of what horror he has inflicted. He has reduced his behaviour as if the actions were by some other person, about whom he offers disconnected analysis and discussion, and were not his

personal actions which so violently ended two young defenceless lives. As such, there appears a degree of sociopathy, where the court must be wary he is notably dangerous, meaning capable of causing more really serious harm to others, as he does not show he understands the depth of his wrong, and therefore could choose to become intoxicated on cannabis again and so again behave this way. He just doesn't get it.

- 11 In mitigating, Counsel Hamilton has conceded the starting point is a whole life term, though went on to argue for a lesser determinate sentence.
- 12 In the Eastern Caribbean Supreme Court (ECSC), there are sentencing guidelines for murder, published in November 2021, on where a 'whole life term' may arise.

Whole life sentence

- 4 If:
 - 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;the appropriate starting point is a whole life sentence.
- 5 Cases where the seriousness of the offence could be considered exceptionally high include:
 - a. the murder of two or more persons;
 - b. the murder is associated with a series of serious criminal acts;
 - c. a substantial degree of premeditation or planning;
 - d. the abduction of the victim;
 - e. a murder involving sexual or sadistic conduct;
 - f. a murder involving prolonged suffering or torture;
 - g. the murder of a police officer, emergency service worker, prison officer, judicial officer, prosecutor, health worker, teacher, community worker or any other public official exercising public or community functions or as a political activist, or the offence arose because of the victim's occupation or voluntary work;
 - h. a murder relating to membership of a criminal gang;
 - i. a murder which is an act of terrorism;
 - j. a murder motivated by hatred for or prejudice against a group of people to which the offender believed the victim belonged (eg people of a particular religion, race, or ethnic origin, language, or sexual orientation or age or having a particular disability);
 - k. a murder involving the actual or threatened use of explosives or chemical or biological agent;
 - l. a deliberate killing for payment or gain (eg a contract killing, or for inheritance, or insurance payout);
 - m. where the offender is assessed as likely to commit further offences of serious violence and is therefore a substantial danger to the community;

- n. a murder by an offender previously convicted of murder; or
- o. a murder by an offender who has a record for multiple previous convictions for serious offences of violence.

- 13 Clearly concerning paragraph 5, Pogson was an adult, and the seriousness of the offences together is exceptionally high, so that sub-sections a and c apply, as to more than one death and premeditation, while consideration is appropriate of sub-sections d, e, f and m, as to abduction, sadistic conduct, prolonged suffering, and how Pogson remains dangerous.
- 14 Pogson was of good character, though in my judgment, this does not automatically reduce his categorization to a determinate sentence. What might have done is if alongside good character there was persuasive remorse, with some attempt at explanation for his actions, though never excuse, with a plea of guilty to support his contrition.
- 15 Counsel Hamilton has offered a number of previous murder sentences by this judge, after trial, to encourage a determinate approach, but none are on point: **R v Meryl Chiddick 2019**¹ was the shooting of a farmer during a raid on a cannabis farm, for which the sentence was 42 years; **R v Steve Urlings 2017**² was the planned shooting of a criminal rival where each expected to kill the other, for which the sentence was 45 years; and **R v Errol Barnes 2017**³ was the shooting of his girlfriend who had left him for his boss, for which the sentence was 39 years. All involved firearms and one death. Here there are two deaths, with the sustained brutality, separately in time, of strangulation and dragging over rocks of Naomi, and later chopping and pursuit of Jimmyiah, each lulled into a false sense of security, going with their killer to the beach.
- 16 More, notionally, it would not be inappropriate to consider the murder of Jimmyiah as a consecutive sentence, as it did not arise out of the same event, but was a later event, involving fetching her and using a different method of killing. Particularly chilling was how Pogson navigated his way past the parents to get to her in her bedroom, and persuade her to accompany him to the beach, knowing he had already strangled Naomi. If determinate sentences, in theory it would likely follow the combination of one following the other would be greater than Pogson's natural life, again pointing to a whole life term.

¹ <https://www.eccourts.org/regina-v-meryl-chiddick-2/>

² <https://www.eccourts.org/regina-v-steve-urlings-jr/>

³ <https://www.eccourts.org/regina-v-errol-barnes/>

- 17 Reflecting further as invited by Counsel Hamilton on the calendar of other reported murder sentences passed by this judge, nothing compares: in **R v Evanson Mitcham 2022**⁴, for a shooting of a man intervening and scuffling to stop a robbery, after trial there was 40 years; in **R v Elton Charles 2019**⁵, on a plea for the brutal murder with a machete of a neighbour, there was 40 years; and in **R v Calvin James 2020**⁶, on a plea for the shooting of two family members, plus an attempted murder, in the context of a long running dispute over land with a history of previous serious violence, there was a whole life term.
- 18 In all the circumstances, there is a particular horror in this case, where two vibrant young women were massacred remorselessly, so that this court is wholly satisfied the correct sentence for these two murders is for a whole life term as the sentencing guidelines contemplate.
- 19 It is important to understand this is not a 'life' sentence, but a 'whole life' sentence, meaning it is not a sentence for some period of life and thereafter there might after serving a minimum term be release on parole or under lifelong licence, as happens in the UK. Instead, it is intended the minimum term under this sentence is the whole life.
- 20 It follows the recommendation is Pogson should never be released and should live out the rest of his natural life in jail. While the work of the Mercy Committee has a separate function, exercising royal prerogative powers under the **ss66-68 Constitution of St Christopher & Nevis**, it is expected this recommendation will be given due appreciation should the committee's work ever turn to whether to release Pogson.
- 21 *Orvis Pogson, please stand up.* For two murders on 01.03.18, first the murder of Naomi by strangling her and dragging her over rocks so you fractured her skull and tore her face, and then later that day of her sister Jimmyliah by luring her from her bedroom, then hacking her to death with 28 blows of a machete, including an aimed blow for decapitation, these being offences at separate times in the day with each a different method of killing, causing great suffering, chillingly going to fetch the second sister from her home after strangling the first, to show the second what you had done, where you show little appreciation of your actions, so that I consider you dangerous, this offending being particularly horrific, the sentence for

⁴ <https://www.eccourts.org/regina-v-evanson-mitcham/>

⁵ <https://www.eccourts.org/regina-v-elton-charles/>

⁶ <https://www.eccourts.org/regina-v-calvin-james/> - though unreported this sentence may have been reduced on appeal to a determinate sentence given the plea.

each murder, and taken in combination, shall be a whole life term, as contemplated by the ECSC sentencing guidelines. It is the expectation of this court you will never be released. You may go with the gaoler.

The Hon. Mr. Justice Iain Morley KC

High Court Judge

19 October 2022