

THE EASTERN CARIBBEAN SUPREME COURT

ANGUILLA

IN THE HIGH COURT OF JUSTICE
(CRIMINAL)

CLAIM NO. AXAHCR 2020/0009

BETWEEN:

REGINA

and

GLENVILLE NKOMO KENYATTA HODGE

Appearances:

Mr. Thomas W. R. Astaphan QC with him Ms. Erica Edwards Senior Crown Counsel
Attorney General's Chambers, Mr. Sasha Courtney Crown Counsel Attorney
General's Chambers of counsel for the Crown
Mr. Tim Prudhoe with him Mr. Carlyle Rogers of counsel for the Defendant

2022: February 4; 17; 22;
: March 17.

*Sentencing – Murder – Section 187 Criminal Code – Factual basis of sentence –
Interpretation of jury's verdict – Correct approach – Practice Direction on Sentencing for the
Offence of Murder for the Eastern Caribbean Supreme Court (the 'Practice Direction') –
Whole life sentence – Exceptionally high seriousness – Whether a determinate sentence or
a whole life sentence appropriate – Fact finding for the purpose of sentencing – Onus and
standard of proof*

[1] **Innocent, J.:** Mr. Glenville Nkomo Kenyatta Hodge ('Mr. Hodge'), after a lengthy trial, was convicted of the murder of Ms. Taitu Kai Goodwin ('Ms. Goodwin') by unanimous verdict of a jury. Mr. Hodge is now before the court for sentencing. Mr. Hodge was indicted on 5th August 2020 for the murder of Ms. Goodwin at Windward Point, in the Island of Anguilla on 9th September 2019 contrary to section 187(1) of the Criminal Code.

- [2] Before setting out the court's approach to sentencing and determining the sentence to be imposed on Mr. Hodge for the commission of the offence of which he stands convicted, it will be necessary to first establish the factual basis upon which the court ought to sentence the offender.
- [3] The approach that the court will adopt in establishing the factual basis for sentence is based on an interpretation of the jury's verdict in the present case.
- [4] The approach which a court passing sentence on an offender ought to adopt is clearly set out in the case of **Regina v King (Dwayne)**¹ where the Court of Appeal following the decisions in **R v Boyer**², **R v McGlade**³ and **R v Bertram**⁴, held, Sweeney J delivering the judgment of the court:
- “In our view the correct approach by the judge, after a trial, to the determination of the factual basis upon which to pass sentence, is clear. If there is only one possible interpretation of a jury's verdict(s) then the judge must sentence on that basis. When there is more than one possible interpretation, then the judge must make up his own mind, to the criminal standard, as to the factual basis upon which to pass sentence. If there is more than one possible interpretation, and he is not sure of any of them, then (in accordance with basic fairness) he is obliged to pass sentence on the basis of the interpretation (whether in whole or in relevant part) most favourable to the defendant.”⁵
- [5] In the present case, it has been submitted on behalf of the Crown that there is but only one plausible interpretation of the jury's verdict and that there were no plausible alternatives open to the jury based on the evidence led at the trial. Counsel appearing for Mr. Hodge have registered their demur to this proposition. It appears that in relation to certain evidence relied on by the prosecution at the trial, counsel for Mr. Hodge argued that it was open to the court to find that there was one or more plausible alternatives left to the jury on certain issues which formed the basis of their verdict. On the contrary, counsel appearing for the Crown argued that the evidence

¹ [2017] 4 WLR 95; [2017] EWCA Crim 128

² (1981) 3 Cr App R (S) 35

³ (1990) 12 Cr App R (S) 105

⁴ [2003] EWCA Crim 2026; [2004] Cr App R (S) 27

⁵ Per Sweeney J. at para 31

was such that a properly directed jury could have only arrived at one interpretation of the facts.

[6] In resolving the impasse between the Crown and counsel for Mr. Hodge on this point, the court will adopt the principled approach that ultimately, subject to what was quoted above as stated by Sweeny J, it is a matter for the discretion of the sentencing judge upon whom it falls to decide the factual basis upon which to pass sentence. The sentencing judge must approach the task at hand with care. It is incumbent on the judge, when distilling the factual basis of the sentence, to explain the factual aspects about which he was not clear, and the factual aspects about which he was either clear or satisfied (which include the findings of fact complained of). In so doing the judge must apply the criminal standard.⁶

[7] In the present sentencing exercise, the court adopts the salutary warning given in respect of the application of the principle of onus of proof and standard of proof by the sentencing court in **R v Reinhold Erhard Olbrich**⁷ where it was held that:

“Much of the discussion of fact finding for the purposes of sentencing addresses questions of onus and standard of proof. References to onus of proof in the context of sentencing would mislead if they were understood as suggesting that some general issue is joined between prosecution and offender in sentencing proceedings; there is no such joinder of issue. Nonetheless, it may be accepted that if the prosecution seeks to have the sentencing judge take a matter into account in passing sentence it will be for the prosecution to bring that matter to the attention of the judge and, if necessary, call evidence about it. Similarly, it will be for the offender who seeks to bring a matter to the attention of the judge to do so and, again, if necessary, call evidence about it. (We say “if necessary” because the calling of evidence would be required only if the asserted fact was controverted or if the judge was not prepared to act on the assertion.)”

Therefore, at the sentencing hearing, the convicted person must raise mitigating factors by adducing evidence, unless the mitigating factors are obvious from the evidence presented at the trial. The onus is on the Crown to negative the presence of mitigating factors beyond a reasonable doubt. It is only trite that the sentencing

⁶ Per Sweeny J. at paras 36-37 in R v King supra

⁷ [1999] HCA 54 at para 25

court may not take facts into account in a way that is adverse to the interest of the convicted person unless those facts are established beyond a reasonable doubt. The convicted person carries the burden of proving on a balance of probabilities matters relative to mitigation submitted in his favour. This principle finds its applicability in relation to the question of premeditation and planning and the provenance of the knife used in the commission of the offence.

[8] Mr. Hodge and Ms. Goodwin had been romantically involved. The evidence led at the trial revealed that the relationship, towards the latter days, was tumultuous.

[9] At the time of the offence, Ms. Goodwin resided alone in an apartment at Sandy Hill. Mr. Hodge resided with his mother at Island Harbour. From the WhatsApp messages evidence lead by the Crown at the trial, it appears that during the course of the relationship, Mr. Hodge perpetrated acts of violence or physical abuse against Ms. Goodwin on several occasions prior to the termination of the relationship by Ms. Goodwin, and subsequent to those WhatsApp messages, the further evidence upon which he was convicted showed both acts of violence and physical abuse used in causing her demise.

[10] WhatsApp messages exchanged between Mr. Hodge and Ms. Goodwin several weeks before the commission of the actual offence disclosed the instances of physical and emotional abuse which Ms. Goodwin suffered at the hands of Mr. Hodge. It must be noted that Mr. Hodge accepted that all the WhatsApp messages lead by the Crown were messages between himself and Ms. Goodwin so that there was no dispute before the jury as to the genesis and veracity of their contents. He in fact identified all the messages by virtue of his WhatsApp number and Ms. Goodwin's WhatsApp number. From those messages put into evidence at the trial, and accepted as being authentic by Mr. Hodge, it appeared that Ms. Goodwin manifested an intention to bring the relationship to an end.

[11] On the night of 30th August 2019, Mr. Hodge visited Ms. Goodwin's residence and remained outside in the dark, despite Ms. Goodwin's repeated pleas for him to leave. During the course of the WhatsApp messaging conversation, Ms. Goodwin

told Mr. Hodge that she would report him to Superintendent Patterson for being in her yard and refusing to leave, which made her feel unsafe. The evidence presented showed that on the morning of 31st August 2019, Ms. Goodwin went to the residence of Superintendent Patterson and reported to him that Mr. Hodge had been coming onto her premises without her permission, and that he was there the night before, and that she would like him to warn Mr. Hodge not to come on her premises without her permission. Mr. Hodge appeared on the scene shortly after Ms. Goodwin arrived at Superintendent Patterson's residence. Superintendent Patterson informed Mr. Hodge that Ms. Goodwin had reported to him that sometime in the past he was at her apartment and was refusing to leave and this led to a physical altercation between the two of them. Mr. Hodge denied stalking Ms. Goodwin. However, he admitted being at her apartment and refusing to leave. He admitted that they were having some problems in their relationship. Superintendent Patterson told Mr. Hodge that Ms. Goodwin had asked that he give her some space and that he must not contact her or go to her apartment until she had given him permission to do so. Mr. Hodge agreed and he left immediately thereafter.

- [12] On the night of 8th September 2019, Mr. Hodge laid wait in the bushes near Ms. Goodwin's apartment. His evidence was that he had tried to WhatsApp Ms. Goodwin but that the messages were not going through, so he decided to go to her home. He said that he knocked on her front door but there was no answer. He said that as he was leaving and at the gate, he saw the lights of a car pulling up and he stepped into "an open area surrounded by trees". At about 12:45 am on the morning of 9th September 2019, Ms. Goodwin returned home. She had been dropped off by a male friend. Mr. Hodge admitted in evidence that, using his cellular phone, he recorded her walking up towards to her apartment while he remained hidden in an area surrounded by trees. On the Crown's case based on the evidence lead, and in contradistinction to Mr. Hodge's evidence that Ms. Goodwin had opened the door of the apartment and let him in, and because his cellular phone chirped as he entered the apartment and connected with her Wi-Fi – signaling messages coming in – Ms. Goodwin tried to take his phone and a scuffle ensued between them, with Ms. Goodwin being the aggressor, it was open to the jury to find that Mr. Hodge broke

into Ms. Goodwin's apartment and attacked her in the bedroom. The court interpreted the jury's verdict to be that an acceptance of the fact that Mr. did indeed break into Ms. Goodwin's apartment and attacked her, and a rejection of Mr. Hodge's version of those events, as indeed the verdict is not capable of any other interpretation.

[13] The WhatsApp messages exchanged between Mr. Hodge and Ms. Goodwin also disclosed that Mr. Hodge harboured the deep seated feeling that Ms. Goodwin was cheating on him with other men, as there were constant accusation made by him about that in the WhatsApp messages.

[14] The jury's unanimous verdict of Guilty of Murder, based on the evidence before them which consisted of two divergent , distinct and incompatible cases –the Crown's and the Accused's - can only be interpreted as follows: (i) That the version of events given in evidence by Mr. Hodge, - wherein he alleged, in summary, that Miss Goodwin had admitted him into the apartment; that she attempted to take his cellular phone; that a scuffle ensued, which caused him to be cut on his shin which bled; that, while he was in the bathroom tending to his cut he observed Miss Goodwin using feet and a white floor mat to wipe up the blood; and that they decided to go for a drive to work things out; that they drove through East End Village, and upon approaching the Junk's Hole intersection Miss Goodwin indicated to him that he should turn into that intersection; that he drove until they arrived at Windward Point beach; that he put a blanket in front of the car and Miss Goodwin sat on it while he stood against the front of the car; that she reached out and took his hand and brought him down onto the blanket; that he sat facing her; that she again tried to get his phone from him; that he stood up, as did she; that she began to attack him; that she spat on him and he hit her in her face; that she continued to be aggressive and he gave her two more blows, one on each side of her face; that she grabbed his phone and threw it behind the car; that he went to retrieve it and on his way back, she went to get a rock which she threw at him, but which missed him and struck his car; that she continued to be aggressive towards him, and she went to the driver's side of his car and came back at him with his knife; that he was able to

disarm her of the knife; that she then went and picked up another rock and made her way towards him; that his back was turned to her and he saw when she raised the rock over her head in a motion which indicated that she was about to strike him with the rock; that he thrust his right hand which had the knife in it backwards in an attempt to block the blow with the rock; that she turned and, essentially, ran into the knife, which caused the fatal wound; - was rejected by the Jury, and that (ii) the Crown's version of events, -constructed upon physical evidence, scientific evidence, and inferences to be drawn from that evidence – which essentially was that Mr. Hodge had, at least on the night of 30 August, 2019, and into the early hours of the 31st, stalked Miss Goodwin; that she had broken off their relationship; that he was not accepting of that reality; that shortly after midnight on the 9th September, 2019, he lay-waited her in her yard, hiding in the bushes; that when she arrived home, having being dropped off by a male friend, he broke into her house via a window which was over her bed and attacked her; that the attack was both brutal and vicious, causing bleeding from her mouth and rendering her unconscious; that, thinking her dead Mr. Hodge attempted to wipe up the blood from the floor, wrapped her body in a blanket, put her into the trunk of his car, drove her over to Windward Point intending to dispose of her body, in lifting her out of the trunk of his car, her left foot dropped from his arm, struck the ground leaving a clear impression of her shoe in the sand – that was the only print of her shoe or shoes on the entire scene; that, while taking her towards the beach, his car having stuck in the sand at the edge of the beach – she showed signs of not being dead and he procured his knife from his car and attacked her with it, and stabbed her fatally in her back, was accepted as fact beyond a reasonable doubt by the Jury, which findings of fact undergirded their Verdict of Guilty of Murder. I am satisfied beyond any doubt that this is the only interpretation which the Jury's verdict admits of. Mr. Hodge in his evidence stated that in the early hours of 9th September 2019, Mr. Hodge telephoned his mother and told her, "Mommy I killed Taitu." He also told his mother to call his cousins and have them pick him up at Windward Point. In cross-examination he was asked why he did not call 911 to get medical assistance for Ms. Goodwin instead of calling his mother, and he said that he called his mother because it was she "... who born

me..." When his cousins arrived at Windward Point Mr. Hodge was seen walking up the road with the assistance of the light from his mobile phone. Mr. Hodge told the three men "I did something bad". When prompted he told Ross Webster that he killed his girlfriend. Ross Webster advised him to turn himself into the police and Mr. Hodge agreed. Ross Webster offered to take him to the police but Mr. Hodge opted to use his car but it was stuck in the sand. The three men assisted unsuccessfully to free the stuck car. When the three men went to assist with removing the car from the sand they did not see anything else but the car in the area. At this juncture Mr. Hodge asked to be taken to his mother's house instead. The court notes that in his evidence under cross-examination, Mr. Hodge said that when he was going from his car to his friend's car for the last time at the scene he observed that there was little movement from Ms. Goodwin where she laid, the implication being that she was still alive at the time. Ross Webster said that on the way down he remembered asking Mr. Hodge where was his girlfriend, and he replied "boy, dog, she were right there."

- [15] The area where the car was and where Ms. Goodwin's body was subsequently recovered was dark and unlit. One witness who went to Windward Point to assist Mr. Hodge, Mr. Jaylon Pina, described it as being "...black like Egypt..." From the evidence it was clear that the area known as Windward Point was a remote and not an area frequently traversed due to its terrain and relatively difficult to drive on unpaved road.
- [16] On the way to his mother's house, Mr. Hodge told Ross Webster that he and his girlfriend had a little fight, and he boxed her in her mouth and he believed he broke her jaw and there was blood by the house. Mr. Hodge also said that his girlfriend was cheating and he didn't want to say who it was she was cheating on him with.
- [17] When they reached Junk's Hole Jaylon Pina telephoned Mr. Hodge via mobile device. Mr. Hodge answered. He said, "Boy Jay I do something bad. Boy I think I kill Taitu." Mr. Hodge explained that he was "by the range where the police be shooting" in Windward Point. The area at Windward Point was extremely dark –

“black like Egypt”. When Mr. Hodge came to the vehicle the three men were travelling in he stated “I think I killed Taitu”. Mr. Hodge also said that he messaged Ms. Goodwin to tell her that he will come by her. He also said that he messaged her and the messages were not going through. He said that he went to where she was staying and he see a car leaving from in the yard and dropped her off. He said that he caught his girlfriend (Ms. Goodwin) cheating. He said he approached her and they had a little fight or something. Then he tell her let’s go for a drive. Mr. Hodge also stated “I murdered my girlfriend”.

[18] On arrival at Island Harbour, Mr. Hodge’s mother was not at home. Mr. Hodge was dropped off at his aunt’s house at Island Harbour. From his aunt’s house, on the morning of 9th September 2019 at about 4:50 a.m. Mr. Hodge called Police Headquarters and he identified himself to a police officer as Glenville Hodge of Island Harbour. Mr. Hodge told the police officer “I murdered Taitu Goodwin.” He also stated “I murdered Taitu Goodwin. I need the police at the junction of Shoal Bay stop sign. I will be waiting there”. Thereafter, a cadre of police officers left for the location.

[19] Officers attached to the Beat & Patrol Department of the Royal Anguilla Police Force arrived at Island Harbour where they met Mr. Hodge. At the time Mr. Hodge was wearing a blue T-shirt that was covered by a black coat, long grey sweat pants and black slippers. Mr. Hodge told the officers, “I killed her. I killed my girlfriend Taitu. She is by the police shooting range in Windward Point.” Mr. Hodge also told one of the police officers on this same occasion that, “Me and my girlfriend was having a conversation and now she is dead. She had a knife and now she is just dead.” Mr. Hodge also told one of the officers that, “Me and my girlfriend were having an argument and she started to act up so we went by where the police does shoot. She had a knife now she is dead”. The Police officers left Island Harbour along with the defendant for Windward Point.

[20] When the police officers and Mr. Hodge arrived at Windward Point at 5:30 am, Mr. Hodge directed one of the officers to drive to a location south of the shooting

range where there are grape trees on the beach. As they drove along the road, one of the police officers saw a black motorcar PB230 facing an easterly direction towards the beach. The vehicle was stationary. The vehicle was a Honda. Mr. Hodge was asked about the location of Ms. Goodwin's body. Mr. Hodge replied, "She by the car."

- [21] The pathway leading to the car comprised of flat rocks with sand. On the left-hand side of the car were grape trees and grass. On the right hand side there was a grassy area. One of the police officers walked on the grass on the right side to the front of the car where Ms. Goodwin's body laid motionless on the ground. Her head was facing a westerly direction with her head facing south. She wore a white vest with what appeared to be blood on her right side. She was also clad in a pair of blue jeans short pants and black and white sneakers. Her eyes were slightly opened. Her mouth was opened with what appeared to be blood flowing from it. She had a dark mark on the left side of her neck. The vest was torn at the collar. Her left arm was bent around the stomach with the palm facing down. Her right arm was extended to the side and covered with a brownish patterned cloth. The cloth had what appeared to be blood on it. Her right leg was extended to the east and her left leg was in a 90 degree angle towards the right. Her body was covered in sand.
- [22] The police officers searched the area and a number of footprints could be seen. Some of these footprints were of a Nike shoe, some unknown shoe prints and some bare foot prints. The shoes that Mr. Hodge wore at the material times were Jordan sliders made by Nike.
- [23] Ms. Goodwin was pronounced dead by a medical practitioner at 7:30 a.m. on 9th September 2019. Mr. Hodge was later taken into police custody.
- [24] Ms. Goodwin's apartment was searched by a cadre of police officers in Mr. Hodge's presence. There was blood on the bed sheet and also on the floor. The areas appeared to have been mopped up or wiped down. These areas were pointed out to Mr. Hodge. Mr. Hodge was asked under caution what these areas represented. Mr. Hodge replied that it is blood. Mr. Hodge was asked who the blood belonged to,

and he replied that it is his blood. Mr. Hodge then showed one of the police officers a small cut below one of his knees and stated that he got the cut when his girlfriend tried to fight with him earlier before he made the report to the Valley Police Station. Mr. Hodge was also asked who mopped it up and he replied, "we mopped it."

[25] Mr. Hodge went on to say to one of the police officers present at the apartment that his girlfriend demanded to see his phone and when he refused to give it to her she fought with him causing bruises to his neck and the cut below one of his knees. He also stated that after the fight he told his girlfriend to take a drive with him to resolve the issue. He said that they drove to Windward Point close to the beach area, they laid a blanket on the ground and while talking she continued to demand to see his cell phone, and when he refused she went into his car for a knife that he had in his car, she tried to stick him with it demanding to see his phone. He stated that he managed to take the knife from her and when she was turning away from him it stuck her in the back. He said she stated that she was going to kill herself and she started throwing herself on the ground a number of times. She banged on the ground a number of times causing injuries to herself.

[26] A post mortem examination of Ms. Goodwin revealed that the main cause of death was a stab wound that entered her chest from the posterior and lateral aspect of the body and injured the lower lobe of the right lung and the right lobe of the liver. This injury resulted in bleeding that caused hemorrhagic shock, and respiratory compromise because of a collapsed lung. There were incised wounds to both hands and to the left forearm which were consistent with defensive wounds. There was multiple blunt force trauma to the face and head consistent with contact with a blunt surface or object. The blunt force trauma resulted in head injury and right subdural hemorrhage and fractured mandibles along with fractures of her upper front teeth. There was blunt trauma to the left of her back and an associated contusion of the left lung associated with severe blunt force trauma. There were marks on the skin associated with the brassiere and consistent with traction from that brassiere. There was evidence of throttling and asphyxia but this was insufficient to have caused her death.

- [27] The left side of a Nike branded pair of shoes was collected from Ms. Goodwin's body at the funeral home. This shoe matched the print located immediately behind the rear bumper of Mr. Hodge's car, next to the boot, or trunk, and was the only shoe print of Ms. Goodwin's shoes on the crime scene at Windward Point.
- [28] Forensic examination of Ms. Goodwin's apartment revealed blood stains in an area between Ms. Goodwin's bed and a bookshelf. The extent of the blood stains was indicative of a significant amount of blood loss. Samples taken of the blood stains were subjected to DNA analysis, the results of which revealed that Mr. Hodge could not be excluded as a contributor to the mixed DNA profile from the blood stains on the floor of Ms. Goodwin's apartment. Also, the DNA analysis revealed that Ms. Goodwin could not be excluded as a contributor to the DNA profiles found on the same blood stains. It is to be noted that in cross-examination Mr. Hodge repeatedly said that it was only Ms. Goodwin and himself at both the apartment and Windward Point at all material times.
- [29] The post mortem examination of Ms. Goodwin revealed that she sustained several injuries about her body consisting of contusions caused by blunt force trauma and two stab wounds, one significant and the other superficial. The former resulted in her death. The nature and extent of the injuries described by the Forensic Pathologist Dr. Stephen James King ('Dr. King') in giving evidence before the jury, would lead to the conclusion that the attack on Ms. Goodwin was savage, brutal and merciless.
- [30] When Ms. Goodwin's body was recovered she was dressed in a white vest which was blood stained and torn. There was damage to the vest and trace vegetable-type material was recovered from the back of the vest. Ms. Goodwin wore a black brassiere and there were impressions and marks on the skin associated with the brassiere. The marks on her skin were indicative of the brassier being applied forcibly or otherwise being moved around on the skin.

- [31] Those impressions described by Dr. King, and associated with the brassiere, in Dr. King's opinion, was indicative of compression and movement of the brassiere on Ms. Goodwin's skin which he thought were related to traction of the bra that would have caused the bra to be more forcefully applied to the skin. According to Dr. King's evidence, if the bra strap is pulled, especially from the back, it was likely that marks to the front of the chest would be found. It appears that the injuries associated with Ms. Goodwin's brassiere were consistent with Ms. Goodwin's body being pulled or dragged.
- [32] Dr. King found that there were multiple contusions to Ms. Goodwin's back, her shoulder blade or left scapular area extending to the middle of her back. In Dr. King's opinion, this contusion was associated with the linear contusion to the left lower lobe of the lung. There was lung damage associated with this injury indicating that this was severe force to that area to cause that contusion and damage to the lung.
- [33] Dr. King's examination of Ms. Goodwin also revealed contusions to the back of her left hand and left thumb caused by blunt force trauma or squeezing or compression. There was a contusion to the back of her right hand. Dr. King also found six linear abrasions to the lateral left thigh approximately parallel with each other. One was deeper than the others and incised through the skin that appeared to be caused by contact with a surface or object or objects.
- [34] The post mortem examination of Ms. Goodwin revealed a stab wound that measured 4 cm at the skin surface and 12.5 cm deep. This stab wound extended from the tip of the scapula to the posterior axillary line, which is the anatomical line. The wound had a skin tag at the back of the armpit which was consistent with two incisions in the lower part which is an insertion and removal, a slight twist between insertion and removal that left a wedge at the sharp end of the blade or one of the sharp ends of the blade. The wound entered the chest from the upper part of the body to the lower part of the body, so it was going down at about 10 degrees through the body. It extended towards the midline of the body.

- [35] This stab wound cut the eighth right rib and passed through the eighth right intercostal space in the same posterior axillary line. Dr. King opined that this stab wound was indicative of the application of significant force. According to Dr. King, cutting a bone takes some force; and that generally speaking, the cutting of bone is indicative, in his opinion, of significant force. The stab wound passed through the lower lobe of the right lung, through the right hemi diaphragm which is the muscle that separates the chest from the abdomen, and then it extended into the right lobe of the liver. The right lobe of the liver was incised and a large branch of the right hepatic vein was incised.
- [36] Ms. Goodwin's right lung was collapsed and there was 1.5 liters of blood and clot in her right chest cavity. The peritoneal cavity, that is abdominal cavity, contained about a half a liter of blood. According to Dr. King, the liver bleeds quite profusely, as does the lung. Ms. Goodwin's exsanguination appeared to be primarily in the chest cavity and some would have exited through the skin surface as well, so there would have been additional blood that would have left the body as well.
- [37] There was a second stab wound to Ms. Goodwin's back slightly above the first stab wound right of the midline. It was just into the soft tissue, so it was a very superficial stab wound.
- [38] There was an incision to the upper outer left forearm caused by a sharp instrument most commonly the knife. There was a 2 cm incision to the left dorsal aspect, or the left index finger dorsal aspect caused by a sharp instrument, so most commonly would be a knife. There was an incision to the distal right thumb on its palmar aspect. Again it was a sharp instrument for instance, a knife. Dr. King opined that these were most likely defensive type wounds and were indicative of somebody attempting to fend off a knife or sharp instrument. There were two continuous incised wounds indicative of two passages of a sharp instrument on the palm, and there was a flap of skin hinged proximally, caused by this injury. These were most likely defensive type wounds.

- [39] The coverings of the brain and the spaces presented hemorrhage in the right subdural space measuring approximately 30 centiliters, and this was consistent with the head trauma that he saw which was significant to the point where it would produce internal cranial hemorrhages.
- [40] Dr. King also described an indentation just in front of Ms. Goodwin's ear. According to Dr. King, this indentation occurred because of the swelling and bleeding and there was something that was pressing against that area. He opined that perhaps Ms. Goodwin's face was laying on that side on an object with the same characteristics as the indentation. He did not see any contusion or damage associated with that indentation per se, so he did not think that this was an object that hit her there or caused that indentation. It was the prosecution's case that Ms. Goodwin sustained this indentation to her face while she was being transported in the boot of Mr. Hodge's vehicle, and Dr. King pointed out to the jury two objects seen in a photograph of the inside of the trunk of Mr. Hodge's car which could have caused the indentation if Ms. Goodwin's face laid on either of them.
- [41] The fatal stab wound was not inflicted at Ms. Goodwin's apartment. The forensic evidence presented at the trial determined that Ms. Goodwin had been severely battered by Mr. Hodge while at her apartment. Ms. Goodwin was rendered unconscious by the numerous blows that she received at the hands of Mr. Hodge. The prosecution's case, based upon the circumstantial evidence, was that Mr. Hodge wrapped Ms. Goodwin in a blanket, placed her body in the trunk of his car and drove to Windward Point where he intended to dispose of Ms. Goodwin's body. The prosecution's case at trial was that had Ms. Goodwin received the fatal stab wound at her apartment there would have been the presence of a more significant quantity of blood there. This was derived from the evidence of Dr. King, and of Scenes of Crime Officer Mrs. Esther Thomas-Hodge.

- [42] The forensic evidence presented also revealed that the subdural hemorrhage caused by the force of the trauma to Ms. Goodwin's head would most likely have rendered her unconscious or had left her with a significantly altered state of consciousness. Ms. Goodwin suffered significant or acute brain trauma resulting in concussion. It was a possibility that having received those blows to the head, the two cheeks and wherever else, had caused the subdural trauma, resulting in her being what is colloquially called "knocked-out".
- [43] In sentencing an offender, the sentencing judge must adopt a methodological approach which is both rational and evidence-based. This is necessary to avoid the sentence imposed being taken or held to be presumptively excessive and disproportionate.
- [44] A sentencing court should be loath to engage in a sentencing hearing that portrays evidential deficiencies and procedural shortcomings which, when taken together, may produce a result that amounts to a failure to adhere to an acceptable sentencing approach. The result would be a sentencing hearing that may be considered flawed and arguably had not met the threshold standards to constitute a fair hearing that would produce a fit, proportionate and just sentence.
- [45] Therefore, the role of the sentencing judge is to ensure that the acceptable principles of sentencing are properly applied, while ensuring that sentences are demonstrably fit and just so that the sentence imposed is reasoned and clear, and to derive a sentence that is in keeping with the standards of justice in an ever changing and evolving context of social realities and evolving standards of decency in modern day society.
- [46] The matter of Mr. Hodge's offending has excited significant popular reaction. Cries for retributive justice of the ultimate kind have echoed across the shores of Anguilla and other neighbouring jurisdictions. In this regard, the court is mindful of the dicta in the case of **Calvin Ramcharran v The Director of Public Prosecutions**⁸:

⁸ [2022] CCJ 4

“Lock him up and throw away the keys was a familiar expression of an earlier generation and the sentiment which it contains continues to express popular reaction to crimes especially of such abhorrence ... It must be appreciated that it is a reaction that, while undoubtedly indicative of a societal disposition, has never been a principle of sentencing because it has no juridical authenticity. No doubt the maximum sentence of life imprisonment that the legislation provides may seem to the uninformed to amount to nearly the same thing, but now it must be accepted that the sentence of life imprisonment will be rare and imposed only in the worst of worst cases.”

[47] The society’s demand for retributive justice is not the only consideration that should drive the sentencing judge. Such an approach would run contrary to the principle aims of punishment and the reverential objective of achieving proportionality in sentencing.

[48] Therefore, a decision on sentencing must be the result of a process that gives full consideration to the meaningful or primary aims of punishment. Retribution alone is not the primary aim of punishment.

[49] In support of the court’s commentary, it may be worthwhile to echo the sentiments expressed in **Ramcharan**:

“A contemporary approach to sentencing is to both frame and treat it as a discrete and separate event from the determination of innocence or guilt. Both are interrelated, yet they each serve entirely different purposes and objectives ... Central to these distinctions are the areas of foci: the trial looks primarily to the past to determine either innocence or guilt while the sentencing process and outcome though grounded in past events look towards the future. Sentencing therefore, demands different mind-sets, approaches and deserves a discrete process and hearing apart from the process to determine issues of innocence or guilt...”⁹

[50] Therefore, the jurisprudence of the courts has evolved over time to embrace a more global, robust and methodological approach to sentencing. The contemporary approach to sentencing is away from the emphasis on punishment, vengeance and retribution, and to focus more on rehabilitation, restoration, protection and peace.

⁹ At para [72]

This approach confirms the necessity for a separate, relevant, researched based and competently informed sentencing hearing.¹⁰

- [51] In the present case, the court will adopt the following approach in sentencing Mr. Hodge. Having found that the jury's verdict is capable of only one interpretation of the evidence lead before it at the trial, the court will first determine the starting point sentence by reference to the seriousness of the offence. When deriving the starting point sentence the court will pay regard to the principle that the starting point sentence should be commensurate with the seriousness of the offence. This exercise will serve to inform the court on the question of whether a whole life sentence or a determinate sentence of a term of years is the appropriate starting point. In this regard, the court will make a determination whether the seriousness of the offence is exceptionally high to warrant the imposition of a whole life sentence or whether the court should consider that the offence does not warrant a whole life sentence as a starting point but a determinate sentence in accordance with the Practice Direction.
- [52] The court will then adjust the appropriate starting point, by scaling it upwards or downwards depending on the aggravating and mitigating factors present in the commission of the offence. Thereafter, the court will make the necessary adjustments to take account of the aggravating and mitigating factors relative to the offender.
- [53] After determining the appropriate sentence, the court will then go on to consider any discount for the period of time spent on remand. The court will also make a determination, if necessary, of the period of time that Mr. Hodge must spend incarcerated before he becomes eligible for parole.
- [54] In every case of sentencing on a conviction for murder, the sentencing judge must consider what sentence is appropriate in the given circumstances. Consideration of the imposition of a whole life sentence ought to be reserved for cases in which there

¹⁰ Ramcharran at para [100]

has been a finding of guilt and the circumstances are especially egregious and a flagrant assault on the sensibilities of all right thinking persons in the society. Where a life sentence is at all a consideration, the first factor to be determined is the rehabilitation possibilities of the convict.¹¹ This is not to deny the discretion of a sentencing judge to impose a sentence of life imprisonment in an appropriate case.

- [55] In the calculation of what constitutes a starting point, a strict mathematical approach cannot be countenanced. A mathematical approximation of all of the relevant factors may, on the face of it, demonstrate structure and transparency but it operates as an unacceptable fetter on the sentencing judge's discretion.¹²
- [56] Therefore, the assessment of a starting point is not capable of exact arithmetical gradation or scaling.
- [57] In considering the aggravating and mitigating factors relevant to the offender, the sentencing court should avoid ascribing a set numerical value to the particular factors it takes into account. Clearly, the nature of these factors do not render themselves readily to the setting of such values.
- [59] What is required is that the relevant factors be taken into account by the sentencing judge and appropriate adjustments be made to the starting point. Ultimately, the figure derived after this adjustment should aim to broadly, and not with mathematical exactitude, reflect the mix of aggravating and mitigating factors relative to the offender.¹³
- [60] The Guidelines strive to achieve both consistency in the approach to sentencing and proportionality. The observations made by counsel on both sides regarding the utility and applicability of the Guidelines and the Practice Direction underscores the proposition that sentencing is essentially an exercise of discretion and not a process of mathematical formulation.

¹¹ Alexander Don Juan Nicholas and Ors v The State, CA. Crim. 1-6/2013

¹² Aguillera at para (23)

¹³ Infra at para (27)

- [61] It has been said repeatedly that the process of arriving at an appropriate sentence is an art and not an exact science. There is no scientific scale by which to measure punishment. In every case it is the duty of the sentencing judge to strive at arriving at a sentence that is just.¹⁴ A just sentence is one that promotes respect for the law and its processes, by reflecting adequately, and proportionately, an approximate balance of all the relevant factors. Such a sentence is one that is expected to fit the crime as well as the offender.
- [62] In this regard, sentences should be proportionate to the gravity of the offence and the degree of responsibility of the offender in the commission of the offence. Accordingly, sentences should not be unduly harsh, in the sense of being incapable of objective justification by reference to the gravity of the crime, the offender's degree of blameworthiness, and his antecedent history; nor unduly lenient in the sense of causing outrage to reasonable expectations of what is the minimum required for the protection of the public.
- [63] Conjoined with the principle of proportionality is the principle of parity. In order to avoid disparity in sentencing, the sentencing judge should pay strict attention to the principles of sentencing and adhere as much as possible to the sentencing guidelines.
- [64] The sentence prescribed on conviction for the offence of murder is life imprisonment.¹⁵ Notwithstanding this statutory mandate, the imposition of a term of life imprisonment is discretionary. The law permits the sentencing court to sentence an offender to any lesser term of imprisonment than that prescribed by law. The imposition of a sentence of life imprisonment may, given the circumstances of a particular case, result in a sentence that is disproportionate and which may properly be regarded as arbitrary.

¹⁴ R v Beckford (1980) 17 JLR 202, 203

¹⁵ Section 189 Criminal Code; Caribbean Territories (Abolition of Death Penalty for Murder) Order 1991 S.I. 1991 No. 988

- [65] Therefore, a convenient starting point for the sentencing court is the determination of whether a whole life sentence or a determinate term of years is the appropriate sentence to impose in a given case. In making this determination, the sentencing court must pay due regard to the seriousness of the offence. According to the Practice Direction, a whole life sentence is appropriate where 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 the offender was an adult when he committed the offence.
- [66] The Practice Direction also sets out the matters which the court should consider in determining whether the seriousness of the offence may be considered exceptionally high thereby warranting the imposition of a whole life sentence.
- [67] It was suggested to this Court by his Counsel that Mr. Hodge's offending does not include any of the matters contemplated by paragraph 4 of the Practice Direction which would render the seriousness of the offence of murder exceptionally high. However, this does not preclude the court from finding that the seriousness of the offence is exceptionally high. Indeed, the categories of cases adumbrated in the Practice Direction warranting the imposition of a whole life sentence are not exhaustive and closed. The court is reminded of the fact that in sentencing an offender the court must apply its discretion. In applying its discretion, the court is entitled to disregard the guidelines and the relevant practice direction where the justice of the case requires, provided it is a case where the sentencing court can provide adequate justification for such a departure.
- [68] Additionally, the court in its examination of the provisions of paragraph 5 of the Practice Direction has noted that the provision utilises the terminology "could be" and "include" which supports the contention that the provision was not intended to be mandatory. Therefore, the court is not constrained by the list of factors set out at paragraph 5 (a) to (o) of the Practice Direction, neither can the Practice Direction be interpreted to mean that the court must find and be satisfied by the presence of

all of the matters listed in paragraph 5. The presence of any one of the factors would be sufficient in a given case.

[69] Mr. Tim Prudhoe ('Mr. Prudhoe'), counsel appearing for Mr. Hodge, impressed upon the court that in light of paragraph 6 of the Practice Direction, the facts, and even on the evidence presented by the Crown, demonstrates that Mr. Hodge's present offending does not attract the imposition of a whole life sentence but instead a determinate sentence.

[70] It was submitted by counsel appearing on behalf of Mr. Hodge that the appropriate starting point ought to be in accordance with paragraph 10 of the Practice Direction which provides for determinate sentence with a starting point of 25 years imprisonment within a range of 15 to 35 years imprisonment. Mr. Prudhoe submitted that the imposition of a sentence at the lower end of the sentencing range of 15 to 35 years imprisonment would be consistent with the ends of justice.

[71] Mr. Prudhoe submitted that the evidence upon which Mr. Hodge's conviction was founded does not reach the level of seriousness contemplated by paragraph 8 of the Practice Direction. According to Mr. Prudhoe, in order for the provisions of paragraph 8 of the Practice Direction to be triggered, at least one of the criteria or factors set down therein must be satisfied. It was Mr. Prudhoe's view that the necessary features of seriousness envisaged by paragraph 8 of the Practice Direction are absent in the present case. Mr. Prudhoe founded his submission on the premise that, whereas the use of the knife in the commission of the offence has never been denied, there is no evidence that Mr. Hodge brought the knife to the scene for reasons other than it merely already having been in his car and this evidence was not challenged in cross-examination.

[72] Paragraph 8 of the Practice Direction provides:

"If the offender was an adult at the time of the offence; the case does not fall within paragraph 4 or 6; and the offence falls within paragraph 9 below; the offence is normally to be regarded as sufficiently serious for the appropriate starting point to be a determinate sentence of 30 years, within a range of 20-40 years."

- [73] Paragraph 9 of the Practice Direction provides that:
- “Cases that would normally fall within paragraph 8 are where the offender took a bladed weapon or blunt instrument to the scene intending to commit any offence; or have it available to use as a weapon; and used that weapon in committing the murder.”
- [74] Paragraph 10 of the Practice Direction provides that:
- “If the offender was an adult when he committed the offence and the case does not fall within paragraph 4, 6 or 8, the appropriate starting point is a determinate sentence of 25 years, within a range of 15-35 years.”
- [75] Before the court makes any assessment of the applicability of the Practice Direction to the present case, it will be necessary to examine further the purpose and intent of the Sentencing Guidelines and the practice directions made thereunder and the approach that the sentencing court should take in applying the relevant practice direction.
- [76] It cannot be overstated or overemphasised that sentencing guidelines are intended to be an aid to the sentencer in getting the outcome to the case which justice requires. It is for that reason that guidelines can never become tram lines within which the sentencer must operate.¹⁶
- [77] As Carswell LJ said in the case of **R v W**¹⁷, although referring to the comparison of sentences in different cases, gives useful guidance in relation to the approach to the application of sentencing guidelines:
- “It has constantly been said that it is not a profitable exercise to compare sentences in this manner. Previous decisions, and particularly those in which the courts have attempted to provide guidelines for sentencers, give an indication of the range of sentences which may ordinarily be expected to follow from conviction of a class of offences, and constitute a reminder of the factors to which a sentencing court should have regard in approaching the case before it. They do not provide a tariff to be applied in a mechanistic manner like logarithm tables. They are rather an avenue along which the sentencer may proceed in his consideration of the case with which he is dealing. He then has to reach a conclusion appropriate in all the circumstances of the case, and it need hardly be said that these will vary infinitely.”

¹⁶ Attorney General's Reference (No. 8 of 2009), Re Mc Cartney [2010] NIJB 367 per Morgan LCJ at para 13

¹⁷ 261095 NICA delivered 26 October 1995

[78] The very same sentiments were expressed by Baptiste JA in **Roger Naitram and others v The Queen**¹⁸ prior to the coming into force of the present sentencing guidelines and practice directions, where His Lordship echoing and adopting the dicta in **Millberry v R**¹⁹, said:

“I fully adopt the above quotation from the Lord Chief Justice. Sentencing guidelines should not be applied mechanistically because a mechanistic approach can result in sentences which are unjust. Having taken the guidelines into account, the sentencing judge is enjoined to look at the circumstances of the individual case, particularly the aggravating and mitigating factors that may be present and impose the sentence which is appropriate. It follows therefore that a sentencing judge can depart from the guidelines if adherence would result in an unjust sentence. The existence of a particularly powerful personal mitigation or very strong aggravating factors may be a good reason to depart from the guidelines. Clearly the suggested starting points contained in sentencing guidelines are not immutable or rigid. Where the particular circumstances of a case may dictate deviating from the guidelines, it would be instructive for the sentencing judge to furnish reasons for so departing.”²⁰

[79] It is the court’s considered view that the circumstances of the present offending are exceptionally egregious, to say the least, that its seriousness can only properly be regarded as exceptional thereby justifying the imposition of a whole life sentence. This was a case involving savage brutality and misogyny. The extent and severity of the injuries inflicted on Ms. Goodwin by Mr. Hodge and the manner and execution of the offence in and of themselves demand that Mr. Hodge’s actions be visited with the most condign consequences. Any sentence imposed on Mr. Hodge must reflect and register society’s abhorrence for such a callous, vicious, gratuitous, and brutal slaying.

[80] However, in sentencing Mr. Hodge, the court has taken into account Mr. Hodge’s age and level of maturity along with the other subjective factors that may have influenced him in the commission of the offence. Additionally, the court has factored into its consideration of whether the imposition of a whole life sentence is appropriate in the circumstances of the commission of the offence, Mr. Hodge’s

¹⁸ [2010] ECSCJ No. 330

¹⁹ [2002] EWCA Crim 2891

²⁰ *Infra* at para [17]

previous good character and his not having been convicted of any similar offence or any offence involving the use of violence, and the fact that the court is unable to make any assessment and determination relative to Mr. Hodge's propensity to commit similar acts of violence in the future so that a whole life sentence would be deemed necessary for the protection of the public. The court will examine these factors when assessing the mitigating factors present in the case as part of its overall determination of the appropriate sentence to impose.

- [81] The court has determined that the seriousness of the offence is exceptionally high. Mr. Hodge's blameworthiness and degree of criminal culpability can be gleaned from the factual basis of his conviction. Based on the evidence lead at the trial, it is easily discernible that Ms. Goodwin had made clear to Mr. Hodge her intention to bring their relationship to a permanent end. It appeared from the evidence that Mr. Hodge, by his actions preceding Ms. Goodwin's murder, was dissatisfied with and disgruntled by Ms. Goodwin's decision and seemingly fueled by feelings of unrequited affection became relentless in his pursuit of Ms. Goodwin's reciprocity for his seemingly unwavering devotion to their now defunct relationship.
- [82] The evidence discloses that Mr. Hodge already incited by his passions, acted out of jealous rage at the prospect of Ms. Goodwin engaging other suitors. This was evident from the WhatsApp messages exchanged between Mr. Hodge and Ms. Goodwin on the days preceding 9th September 2019.
- [83] On the night of 8th September 2019, Mr. Hodge laid wait near Ms. Goodwin's apartment until she arrived home early the following morning after spending the night with a male companion who dropped her off at her apartment. Mr. Hodge, seemingly enraged by the materialisation of his constant anxiety and suspicion that Ms. Goodwin was seeing other men, broke into Ms. Goodwin's apartment and battered her violently until she became unconscious. "Every great love brings with it the cruel idea of killing the object of its love so that it may be removed once and

for all from the wicked game of change: for love dreads change even more than annihilation”.²¹

- [84] In an attempt to conceal his conduct, Mr. Hodge wrapped Ms. Goodwin’s body in a quilt or blanket and placed her in the trunk of his car. He drove to Windward Point where he intended to dispose of and conceal Ms. Goodwin’s apparently lifeless body. For whatever reason, whether to ensure that Ms. Goodwin was dead or having realised that Ms. Goodwin had regained consciousness, Mr. Hodge stabbed her twice in the back with a knife. One of the stab wounds inflicted by Mr. Hodge was superficial, the other was fatal. The fatal stab wound was indicative of insertion and retraction of the knife. The bloodstained knife was recovered by the police in the passenger seat of Mr. Hodge’s car.
- [85] It was also revealed from the evidence that Mr. Hodge wrote a note to his mother and close friends apologising for his conduct while contemplating suicide. “We are never so desolate as when we have lost the object of our love or its love for us”.²²
- [86] Mr. Hodge, having come to the realisation that his car was stuck in the sand, telephoned his mother seeking assistance from other relatives to help him remove the immobilised car. In the telephone conversation with his mother, Mr. Hodge told her that he had killed Ms. Goodwin. Having obtained the required assistance from his relatives, Mr. Hodge left Ms. Goodwin’s body where it unceremoniously laid on the sand about eight feet from where his car had been stuck. It was only when he was en route to his mother’s house on the way from Windward Point, and when prompted about the location of Ms. Goodwin’s body did he venture to say that she was right there, insinuating that her body was at Windward Point. None of Mr. Hodge’s relatives who went to assist him at Windward Point were alerted to the presence of Ms. Goodwin lying in front of his car. The court reiterates that Mr. Hodge’s evidence suggested that when he was leaving Windward Point with his cousins there was “little movement” by Ms. Goodwin as she laid where she fell when

²¹ Friedrich Nietzsche

²² Sigmund Freud

he stabbed her, suggesting that she may well have still been alive at that point in time. He made no effort to get any assistance for her. He sought assistance for himself and left her there.

- [87] On behalf of Mr. Hodge, Mr. Prudhoe submitted that the only aggravating factor relevant to the case is the physical suffering inflicted on Ms. Goodwin before her death.²³ In addition, Mr. Prudhoe expressed the view that the lack of provocation itemised at paragraph 12(n) of the Practice Direction is plainly not provocation in the technical legal sense, as otherwise it would be an aggravating factor even to lack the defence of provocation to murder. According to Mr. Prudhoe, the jury's verdict demonstrates that they did not find provocation that rose to the necessary legal standard, but there was no basis in sentencing for rejecting the evidence of "provocation" within the lesser context of domestic disharmony.
- [88] Mr. Prudhoe described as powerful mitigating factors Mr. Hodge's prompt cooperation with the investigative authorities, his prior clean record and relative youth.
- [89] The Crown posited that the extent of the injuries suffered by Ms. Goodwin and the degree of force used to inflict the same was significant. This is well documented in the evidence of the forensic pathologist who testified at the trial.
- [90] Another feature of the seriousness of Mr. Hodge's offending was Ms. Goodwin's youth and her vulnerability arising from her geographical isolation.²⁴ The Crown submitted that Ms. Goodwin lived alone in an apartment located at the end of a long dirt road which was secluded from neighbours by the bushes surrounding her apartment. In addition, Mr. Hodge drove Ms. Goodwin to the isolated beach at Windward Point which was only accessible along a long rocky road , to an area of Anguilla which was both desolate and uninhabited.

²³ PD para 12(c)

²⁴ PD para 12(b)

- [91] It was the Crown's submission that after the events that led to Ms. Goodwin's demise, Mr. Hodge, instead of seeking assistance for Ms. Goodwin, called his mother and left the scene with members of his family while Ms. Goodwin's body laid unattended at the crime scene. This was derived from Mr. Hodge's cross-examination as stated above.
- [92] Another element of the seriousness of the offence which cannot be divorced from the totality of the circumstances giving rise to the commission of the offence, was the evidence that Mr. Hodge stalked Ms. Goodwin on at least one prior occasion, more significantly during the ten day period immediately preceding her death at his hands.
- [93] The mental and physical suffering inflicted by Mr. Hodge on Ms. Goodwin prior to her death also served to augment the seriousness of the commission of the offence.²⁵
- [94] The Crown relied on what was perceived as Mr. Hodge's lack of remorse for the commission of the offence in light of his testimony at the trial.
- [95] The Crown also advanced the unprovoked nature of the offence as an aggravating factor.²⁶
- [96] Ultimately, the Crown relied on Mr. Hodge's concealment and attempt at disposal of Ms. Goodwin's body as an aggravating factor.²⁷
- [97] The Crown adopted the position that Mr. Hodge's relative youth and the fact that he was a first offender were clearly mitigating factors present in the commission of the offence. It appears that the Crown also alluded to Mr. Hodge having taken the police to the crime scene at Windward Point as being a mitigating factor.

²⁵ PD para 12(c)

²⁶ PD para 12(n)

²⁷ PD para 12(o)

- [98] The Crown advanced the argument that the aggravating factors in the commission of the offence far outweigh the mitigating factors. Therefore, according to the Crown, having regard to the overwhelming and substantial aggravating factors present in the commission of the offence taken in conjunction with the overwhelming evidence relative to the seriousness of the offence, the sentence that was suggested by counsel appearing for Mr. Hodge, would not, in all the circumstances of the case, be an appropriate exercise of the sentencing discretion.
- [99] In assessing seriousness in the circumstances of any given case, the court cannot look at one factor in isolation and out of context but rather, has to evaluate the entirety of the circumstances of the offence and the offender. In carrying out this evaluative exercise, the court has distilled the following matters giving rise to the exceptional seriousness relative to the commission of the offence.
- [100] The evidence revealed that (1) Mr. Hodge harassed and stalked Ms. Goodwin just prior to the commission of the offence; (2) the commission of the offence was preceded by home invasion. Mr. Hodge invaded Ms. Goodwin's home. Both the window and the door to Ms. Goodwin's apartment appeared tampered with. In addition, Mr. Hodge had been forbidden by Ms. Goodwin from coming onto her premises. Mr. Hodge's presence at Ms. Goodwin's premises on the morning of 9th September 2019 was contrary to Ms. Goodwin's demands that he refrained from coming onto her premises; (3) both Ms. Goodwin's geographical location and her gender contributed to her vulnerability, which was obviously known to Mr. Hodge. Ms. Goodwin's apartment was located in an isolated area where she resided alone and Windward Point where she was stabbed and died is remote and desolate, and the conduct of Mr. Hodge which lead to Ms. Goodwin's death occurred in the early hours of the morning when there would not normally be persons around either scene, or on the roads, apart from Mr. Hodge's evidence that they had passed a garbage truck on their way to Junk's Hole junction; (4) the offence was committed with a potentially dangerous and lethal weapon; (5) the evidence revealed that Ms. Goodwin was struck on the head and face repeatedly; (6) the degree of force used to inflict the injuries on Ms. Goodwin was excessive and extreme; (7) Mr. Hodge

inflicted multiple severe injuries on Ms. Goodwin at her apartment. The latter two are deserving of special treatment and can be distilled from the forensic evidence presented at the trial.

[101] An examination of Ms. Goodwin's eyes by the pathologist revealed a few subconjunctival punctate hemorrhages which is called petechiae, to left and right eye. There were a few subconjunctival dot-like hemorrhages, spot-like hemorrhages, called petechiae. These were to the left and right eyes. This injury seen to Ms. Goodwin's eyes were most commonly associated with asphyxia especially in instances where there had been compression of the neck or throttling or strangulation.

[102] Post mortem examination of Ms. Goodwin's body also revealed blood around her mouth. There were also multiple abraded contusions. There were multiple contusions in the area of the right side and front of her neck, some of which were linear, and appeared consistent with fingernail markings to the right side and front of the neck.

[103] Ms. Goodwin sustained two stab wounds to the back. She also had multiple contusions to the front and back of the body. She also had multiple contusions to the hands and arms, and incised or sharp wounds to her hands and arms. There were nine abraded contusions to the left side of her head and face. These abraded contusions ranged from 2.5 cm in diameter to 10x4 cm. They appeared relatively uniformed and broad. They were of the same timing and of a very similar pattern. They appeared to have been caused by a blunt surface or object that made contact with her body to produce these injuries. There were also six abraded contusions to the right side of her head and face. They ranged from 2 to 5 cm in diameter and were similar to the ones on the left. These contusions were also uniformed and broad and appeared to have been inflicted at the same time.

[104] The evidence revealed that the multiple blunt force trauma to Ms. Goodwin's face and head were consistent with contact with a blunt surface or object. The pathologist opined that such a surface or object could have been a person's hands. To use

colloquial terms, the injuries could have been sustained by "hard slaps", and the heel of the palm, the latter being a very strong instrument as well. It was the pathologist's opinion that the blunt force trauma to the left side of Ms. Goodwin's face could have been caused by an open hand hitting the face with the heel of the palm with severe force. There were multiple contacts, all uniformed and broad, that were consistent with that. There were nine instances of blunt force trauma to the left side of Ms. Goodwin's face and six on the right. There were two fractures to the right mandible, one on the right, and one on the left. The pathologist opined that those injuries could have been caused by severe blows with an open hand, the heel of the hand. In the opinion of the pathologist, the injuries that he saw to Ms. Goodwin's head and face could not have been self-inflicted; an opinion that ran contrary to Mr. Hodge's versions of events as to how Ms. Goodwin sustained those injuries. The court notes that Mr. Hodge, despite giving evidence that it was only Ms. Goodwin and himself at both scenes of crime, denied either throttling her, or choking her, and stated that he had no knowledge of how she would have suffered this particular injury to her neck. The court further notes that Mr. Hodge, despite the aforesaid, admitted to only hitting Ms. Goodwin three times in her face, and these he said were inflicted at Windward Point. He denied hitting Ms. Goodwin at the apartment. Dr. King's evidence is that she received fifteen separate blows to her face and head, and judging from the evidence of blood seen in the photographs at the apartment, the pathologist was of the opinion that this amount of blood was consistent with Ms. Goodwin bleeding from her mouth while lying on the floor between the bed and the bookcase.

- [105] Ms. Goodwin had multiple contusions to the upper and lower lips. She had bruises on the inner side of the lips, the mucosal side of the lips, inside of the mouth. The upper right lip had a 2 cm contusion and the other contusions ranged from 0.5 to 1 cm in diameter. There was a fracture of the left ramus, that's the left long piece of the mandible which is the jaw bone between the left canine and the first premolar. There was a fracture immediately behind the right last molar at the angle. These were complete fractures of the jaw bone. There was a fracture of the two upper right incisors at the root, the two front teeth on the right, that is, at the level of the gum.

- [106] There was a group of linear abrasions or scrapes to the upper right neck that appeared to be consistent with fingernail markings, which Dr. King said would be consistent with her trying to pry from her neck hands that were throttling her. There were multiple contusions to the left and right neck, mainly at the front. Underlying these contusions were hemorrhages in the strap muscles of the neck and the soft tissue of the neck that were attributable to compression of the neck.
- [107] There was a hemorrhage to the upper right neck adjacent to the thyroid cartilage which is the larynx or voice box. There was a hemorrhage to the upper left neck adjacent to the thyroid cartilage. There was a hemorrhage found in her left submandibular gland which is up under the jaw. Behind her upper esophagus there was a hemorrhage. There was a hemorrhage in the lower anterior right neck immediately above the collarbone where it meets the breastbone; one on the left and one on the right at the same level. Given the nature and size of these contusions they were likely to have been caused by a hand and essentially throttling, squeezing the neck. This was described as a severe injury that involved the application of fairly significant force to compress the neck to cause hemorrhage behind the esophagus. The likelihood of Ms. Goodwin having been throttled was supported by the signs of asphyxia in the conjunctiva of the eye. These signs most commonly occur post mortem when there is throttling with increased venous pressure and low oxygen from neck compression.
- [108] There were multiple of seven contusions to the upper front of her chest. Each contusion was associated with one application of force or contact with a blunt surface or object.
- [109] The foregoing is emblematic of the brutality and callousness involved in the commission of the offence. The degree of violence, disrespect and disregard for and against the preciousness and value of human life, and the integrity of the person exhibited by Mr. Hodge is undeniable. Mr. Hodge's conduct towards Ms. Goodwin at her apartment disclosed the infliction of a large number of serious injuries on

Ms. Goodwin's body. Ms. Goodwin would have suffered severe mental anguish and physical pain during the infliction of these injuries.

- [110] It would appear that Mr. Hodge acted out of a loss of temper or rage reaction to the circumstances of Ms. Goodwin's perceived infidelity. The events giving rise to Ms. Goodwin's death was one of misogynist violence. The attack was unprovoked. Apart from Mr. Hodge's evidence of provocation and self-defence, both of which, by their verdict the jury rejected, there was no evidence that Ms. Goodwin attacked or provoked Mr. Hodge. There was much debate during the sentencing hearing as to the actual connotation of the word "provoked". In any event, the commission of the offence involved the use of gratuitous violence of a most sadistic nature.
- [111] In addition to the matters adverted to at paragraph [100] above, the court has taken into account the concealment or attempt at concealment of Ms. Goodwin's body after the infliction of serious and grievous harm on her, seemingly to conceal the commission of his criminal actions albeit unsuccessfully. The court has also considered, based upon the jury's verdict, and the interpretation thereof by this court, Mr. Hodge's attempt at disposal of Ms. Goodwin's body was callous.
- [112] The court has taken the view that there is no evidence of remorse or taking of responsibility on Mr. Hodge's part. A sentencing judge should be aware that at times what appears to be remorse may very well be no more than self-pity of an offender for his predicament and would probably be skeptical about unsubstantiated claims that an offender is genuinely remorseful. The sentencing judge should engage in a proper and robust evaluation of all the circumstances that may demonstrate an offender's remorse.
- [113] In the present case, Mr. Hodge has maintained his not guilty plea throughout the trial and beyond; he is not to be punished nor should his sentence be increased by reason of that fact. However, by adopting this course, he has not the benefit of the mitigating effect that would have resulted from a guilty plea. However, Mr. Hodge's lack of remorse for the commission of the offence was demonstrated by his own testimony during the course of the trial. Mr. Hodge accepted that his actions caused

the death of Ms. Goodwin. However, it appeared from the evidence that Mr. Hodge attributed Ms. Goodwin's death to her own actions; not to his actions, save for his evidence of trying to fend off the rock with his hand that held the knife which stabbed her in her back and killed her. That essentially she was to be blamed for her own demise. In large measure, Mr. Hodge sought to demonise Ms. Goodwin and made her out to be the progenitor of the disharmony in their former relationship which ultimately led to her death. However, the evidence presented painted an entirely different picture particularly in light of the relationship evidence relied on by Mr. Hodge and the evidence of the events that unfolded prior to the morning of 9th September 2019.

[114] However, the court also takes cognizance of the fact that even after he was found guilty, Mr. Hodge offered no meaningful expression of remorse and has thereby denied himself the mitigation earned by genuine remorse.

[115] In the PSR, under the rubric "Attitude towards the offence", the writer stated that:

"Mr. Hodge was asked about his attitude towards the index offence. He expressed his desire to apologise to Ms. Goodwin's family for the role that he played in her death. During the interview, Mr. Hodge demonstrated a lack of empathy and remorse and he expressed no emotion."²⁸

[116] Mr. Hodge was a young adult at the time of the commission of the offence. Therefore, the court will assess Mr. Hodge's youthfulness as a factor to be considered in the determination of whether the imposition of a whole life sentence is appropriate in the circumstances. Where the offender is a young person who is in relevant respects a first offender and appears generally motivated towards reform, there may be a benefit both to the offender and society of a significantly reduced sentence.

[117] Youth, and the prospect of rehabilitation, may be considered as factors militating against the imposition of a life sentence. However, it is important to recognise that what is appropriate in any given case depends substantially on the circumstances

²⁸ PSR at para 7.1

of the case. Whether this is so in a particular case, requires a realistic assessment which gives proper and adequate weight to the fact that a vicious attack on a victim resulting in murder, even when committed by an immature offender, remains serious violence and aggressive offending.

- [118] Once the age of majority has been attained, that is eighteen years, with the attendant conferral of important adult rights and privileges, youth by itself cannot lead inevitably to a reduction in sentence. Adult offenders must be taken, when deliberate action is engaged in, to have courted the consequences of their behaviour choices. By doing so, adult offenders cannot seek to be partially immunised in the sentencing process, by praying in aid “young adulthood” as a mitigating factor. If the age of majority is to be considered as meaningful, representing as it does both notionally and practically the portal into the world of adult decision-making and overall responsibility, then any offender of and above that age will have a severely steep uphill climb in persuading a sentencing court, that without more, comparative youth is a mitigating factor that should steer the court away from a life sentence.
- [119] In the present case, there is no evidence to suggest that Mr. Hodge’s youth played any role or contributed to influencing his behaviour in any respect. On the contrary, Mr. Hodge appeared to have made some very deliberate decisions in carrying out the offence.
- [120] There is no evidence of Mr. Hodge having any prior criminal behaviour or record. The court has before it on the one hand, Mr. Hodge’s good character, and on the other, the multiple egregious factors relative to the seriousness of the offence. The combination of these factors makes the offence so abhorrent that Mr. Hodge’s good character pales into insignificance, so that it fails to hold sufficient merit to justify a departure from the sentence of life imprisonment.

- [121] The court recognises, that for all intents and purposes, the presence or absence of planning and premeditation in the commission of the offence arises for consideration in the court's assessment and final determination. It cannot be said with any degree of certainty, or at all, that Mr. Hodge's behaviour that led to Ms. Goodwin's death involved any degree of planning or premeditation on his part. By "premeditation" the court does not mean the "intent" necessary for a guilty verdict on the charge of murder, which the jury found to be present by their verdict, instead it is meant to convey distinctly as premeditating the murder, which is not a necessary element in the commission of the offence of murder, but goes towards aggravating the commission of the actual offence.
- [122] The evidence of the presence of the knife in the commission of the offence appeared to have been an area of contention in this respect. The prosecution and the defence appeared divided on the question of whether Mr. Hodge had armed himself with the knife for its intended purposes or whether the knife was habitually in his car. In the court's view there was no conclusive evidence presented at the trial that Mr. Hodge deliberately armed himself with the knife for the purpose of inflicting harm on Ms. Goodwin. In arriving at their verdict it appears that the jury may have been more particularly concerned with the fact that Mr. Hodge used the knife to inflict the fatal injury on Ms. Goodwin and not necessarily with the question of how the knife came to be in Mr. Hodge's possession at that particular time. What is relevant in interpreting the jury's verdict is the fact that Mr. Hodge had the knife in his possession at Windward Point and that he used the knife to cause Ms. Goodwin's death.
- [123] The court, in assessing the subjective factors that might have influenced Mr. Hodge in the commission of the offence, has considered the pressures under which the offence was committed, for example, emotional stress or other partial excuse.
- [124] Mr. Prudhoe, in his submissions underscored what he described as the disharmonious relationship between Mr. Hodge and Ms. Goodwin. In the court's view Mr. Prudhoe has not accurately contextualized the nature of the relationship.

The simple fact is that at the time of the commission of the offence Ms. Goodwin had evinced an intention to bring the relationship to an end and had conducted herself in such a manner as to drive home to Mr. Hodge that this was indeed the case. On the evidence it appears that Mr. Hodge had great difficulty accepting this reality. In addition, the evidence elicited by the Crown in cross-examination of Mr. Hodge showed that Mr. Hodge's assumption of the role of the physically, emotionally and psychologically abused party in the relationship which was an allusion to or synonymous with "battered man's syndrome", as presented in his evidence-in-chief to the jury, was false; and in fact he was the perpetrator of the physical abuse against Ms. Goodwin. The WhatsApp messages tendered in evidence were before the jury and their verdict clearly demonstrates this to have been their factual finding.

- [125] In any event, the evidence presented did not point to anything that was forensically askew in Mr. Hodge's personality which would have caused him to have a propensity to commit an offence. There was no psychological or psychiatric evidence presented to even suggest that Mr. Hodge suffered from any personality disorder or mental illness that would have influenced him in the commission of the offence.
- [126] Mental health conditions and disorders may be relevant to sentencing in a number of ways. They may be relevant to the assessment of the offender's culpability in committing the crime in question. Where an offender suffers from a mental health condition or disorder, the sentencer must consider whether it affected culpability. Where the offender's mental condition has been exacerbated by a failure to take prescribed medication, or by "self-medication" with controlled drugs or alcohol, the sentencer will consider whether the offender's conduct was willful or arose, for example, from a lack of insight into his condition.
- [127] When considering matters of this nature, the sentencer will be focusing on the offender's mental health at the time of the offence. They may also be relevant to the decision about the type of sentence imposed. Where a custodial sentence is necessary, mental health conditions and disorders may be relevant to the length of

sentence and to the decision whether it can properly be suspended. In these respects, it is the offender's mental health at the time of sentence, rather than at the time of the crime, which must be considered. They may be relevant to an assessment of whether the offender is dangerous.

[128] In deriving the appropriate sentence the court has assessed Mr. Hodge's capacity for reform. This included an evaluation of whether Mr. Hodge presented a risk of danger to the public and whether any period of incarceration was necessary to achieve the aim of rehabilitation which would require an adjustment to the starting point sentence.

[129] The Pre-Sentence Report ('PSR') disclosed that "Mr. Hodge presents as Medium Risk of reoffending, Medium Risk of causing harm to others and Medium Risk of causing harm to self".²⁹

[130] It is the court's considered view that the PSR provides only limited and minimal assistance, if any assistance at all, on the issue of dangerousness. The PSR lacked any empirical or scientific context in relation to the question of risk assessment and risk management. Essentially, by its very lack of empirical substance it was a clear invitation to the court to speculate on matters upon which the court professes to have no expertise. At best, the PSR provided a very obscure basis upon which the writer's opinions as to risk assessment were derived.

[131] In order to deal justly with the individual offender, the sentencing court must be furnished and have access to all relevant information about the offender. Although there is no statutory requirement for the court to order a pre-sentence report at this stage of the proceedings, it has become the recommended practice in courts in this jurisdiction to request one where the offence involves violence of a serious nature.

²⁹ PSR at paras 9.9 and 10.3

- [132] In the present case there is no evidence emanating from the PSR by which any assessment can be made of Mr. Hodge's capacity for reoffending or rehabilitation. There is also no evidence of Mr. Hodge's mental and psychological functioning presently and at the time of the commission of the offence. Suppositions about these matters will always be arbitrary and are to be avoided as a matter of judicial responsibility. With appropriate evidence this may be otherwise.
- [133] At the sentencing hearing the court had before it a psychological assessment report dated 3rd February 2022 of Dr. Timothy David Carrington Green ('Dr. Green') a Chartered Consultant Clinical Psychologist. Dr. Green conducted a psychometric testing and evaluation of Mr. Hodge. Dr. Green based his opinions related to the issues concerning Mr. Hodge's propensity for reoffending and risk assessment related to committing further acts of a violent or aggressive nature.
- [134] Dr. Green relied on two forms of psychometric testing, namely, State, Trait, Anger Expression Inventory Version II (STAXI-II) and Risk Matrix 2000 – Violence (RM2000/S) in his evaluation of Mr. Hodge.
- [135] The STAXI-II is a self-reporting measure of anger which assesses different aspects of anger. The various subscales of this psychometric test measures the intensity of an individual's feelings of anger at the time of testing and at times and situations specified by the test administrator, evaluates a person's general disposition to become angry, whether a person has an overall angry temperament, or whether a person tends to respond with anger when they are being treated unfairly by others or, are being criticised by others. Another subscale of the STAXI-II describes the extent to which a person expresses their emotional experience of anger in an outwardly negative and poorly controlled manner which may involve the expression of hostile or aggressive actions, for example, assaulting other persons or the destruction of objects, or verbal expressions of anger by the use of insults or foul language. This test also evaluates whether other people may become targets for hostile or aggressive behaviour if they are perceived as related to the source or, are simply proximal to when the expression of anger occurs. The STAXI-II also

measures the extent to which persons suppress feelings of anger and the measures that they take to repress feelings of anger. Another subscale of the STAXI-II evaluates the overall estimate of a person's tendencies to express anger either outwardly towards other people or inwardly to themselves. Mr. Hodge's scores on this test were presented in Dr. Green's report.

[136] Dr. Green stated in his report that Mr. Hodge's results on the STAXI-II revealed that he was reporting more anger at the time of the assessment than most men his age would usually report. According to the report, this was particularly in terms of feeling like expressing anger physically and feeling like expressing anger verbally. Based on Mr. Hodge's scores, Dr. Green opined that Mr. Hodge does not identify as someone who is easily triggered when faced with challenging situations such as receiving negative feedback or believing that he has been treated poorly. The evidence before the court at trial, particularly from the WhatsApp messages, and from Yohan Romney, tend to throw Dr. Green's said opinion into grave doubt. The events of the night of 30th August into the early hours of 31st August; the puncturing of the ball and the reason Mr. Hodge gave for so doing; the evidence of Yohan Romney as to Mr. Hodge's demeanour both in the apartment where Mr. Hodge entered and found Miss Goodwin and Mr. Romney, in Queen's, New York, and in the car on the drive to Brooklyn, where Mr. Romney was concerned about Mr. Hodge's utterances in relation to Ms. Goodwin, and his reasons for insisting on taking Mr. Hodge to Brooklyn, to get him away from Ms. Goodwin because of his obvious anger, all go to show that Mr. Hodge was "easily triggered" into anger when faced with things not going his way.

[137] Dr. Green also administered the RM2000/S which is an evidence based risk assessment tool for men aged 18 and over. This psychometric test predicts the likelihood of reconviction for a sexual or violent offence. It is a tool used to predict which offenders are most likely to be reconvicted and who require greater resources in the management of such risk. Each level of the test refers to a statistical likelihood of reconviction for a sexual offence. According to Dr. Green's report, Mr. Hodge's score on this test places him in the medium category of risk of reoffending; and a

medium risk score equates a 12% risk of reoffending over 5 years and a 19% risk over 15 years. Dr. Green stated in his report that these scores are based on actuarial variables and as such once an individual achieves a certain score it is not possible for that score to decrease, no matter how much time passes or what factors may vary.

[138] Dr. Green's opinion based on the administration of the psychometric tests that there is no evidence of Mr. Hodge being involved in violence which might have had a positive psychological reinforcing mechanism such as seeking means to improve and to promote his self-esteem, for example, using violence as a threat to others in order to inflate his own self-esteem. Dr. Green also opined that there is no evidence outside of the index offence for which Mr. Hodge has been convicted to suggest that he possesses a tendency towards perpetrating violence against women generally.

[139] Ultimately, Dr. Green espoused the view that Mr. Hodge does not present a significant risk of violence in the community, notwithstanding the index offence. He further opined, in relation to Mr. Hodge's recent offending that:

"It is conceivable to suggest that this might have been an event that was peculiar to other events in that this was a relationship which became over-involved with emotion and escalated into violence."

[140] Dr. Green also concluded that notwithstanding his assessment of Mr. Hodge as presenting a low risk of violence in the future and unlikely to be prone to expressions of anger, he formed the view that Mr. Hodge is not someone likely to be violent with any frequency in the future, but the severity of the violence displayed in the commission of the subject offence is of such extremity that it must be taken with grave concern. The court repeats its observations at paragraph [136] above.

[141] Mr. Hodge has no previous forensic history and no history of violence recorded against him. In all the circumstances of the case, it appears that the present offending while it was a single event, it was not an isolated expression of violence that occurred within its own peculiar context, but was rather, the culmination of a series of violent actions taken by Mr. Hodge against Ms. Goodwin – as evidenced by the WhatsApp pictures of Ms. Goodwin's injuries which she sent to Mr. Hodge -

.over a period of time which, upon the realization that she had “moved on” from him, culminated in the early hours of the morning of September, 9th, 2019, in Mr. Hodge brutally attacking Ms. Goodwin at her apartment in Sandy Hill, then fatally stabbing her at Windward Point. In the premises, it does not appear from the evidence available to the court that Mr. Hodge, in similar circumstances of romantic, or other rejection, represents a significant risk, though a medium risk, of violence to the community in general or specific groups of persons in the community. Dr. Green in his report opined:

“I am in a situation of forming an opinion of Mr. Hodge wherein he is not somebody who is likely to be violent with any frequency in the future, but the severity of the violence on the occasion that is before the court is of such extremity that it must, of course, be taken with grave seriousness.”

- [142] In Dr. Green’s view, the difficulties in Mr. Hodge were more of an interpersonal nature, and his capacity to manage anger that he may have felt was such that he was not able to manage it. In the premises, Dr. Green opined:

“A greater repertoire of social skills may be required for him to cope with relationship tensions in the future so that he does not once again fall foul of finding himself incapable of managing such emotions, and these then escalating and perhaps boiling over into violence.”

- [143] It appears that Dr. Green’s assessment of Mr. Hodge was that he was a suitable candidate to participate in talking therapies that would assist him in gaining greater mastery over his emotional processing, and thereby, his behaviour. Dr. Green recommended that relationship skills management group programmes or individual therapies would benefit particularly Mr. Hodge.

- [144] Dr. Green in his report also recommended that Mr. Hodge be offered and avail himself of such opportunities, and that they be made available to him within the prison service and through probation. According to Dr. Green, successful completion of such treatments would, in his view, reduce his risk profile going forward.

- [145] It is not in dispute that Mr. Hodge does not suffer from substance abuse that is linked to violence; or that he has limited cognitive skills or learning difficulties that might

lead him to fits of violence attributable to his inability to process emotions. It is also not in dispute that Mr. Hodge suffers from or has suffered from any mental illness that makes him vulnerable to acting in a violent manner if he were not properly treated.

[146] Where it can be said that there were aspects of Mr. Hodge's behavior, given the circumstances of the commission of the present offence, that seemed odd and such oddities having been noted as being the infliction of severe violence on Ms. Goodwin, the court does not consider any to be odd or presumptively indicative of any amenability to rehabilitation on account of any mental or psychological illness. Indeed there is no such evidence placed before the court. In the circumstances, the court is of the considered view that no longer than commensurate sentence is required to protect the community or specific groups in the community from harm from Mr. Hodge that is required or necessary on account of any mental illness likely to make him vulnerable to reoffending in a similar manner or to engage in acts of violence attributable to such mental illness.

[147] However, in light of the tenor and context of Dr. Green's report, the court has great difficulty in forming the view that Mr. Hodge is a suitable candidate for rehabilitation. Therefore, the court must apply its discretion when sentencing Mr. Hodge to take into account the need for rehabilitation to lessen his risk profile. In addition, the sentencing court must also take into consideration in deriving the appropriate sentence, the likelihood of reform of the offender by means of rehabilitative processes. The court has formed the view, in light of Dr. Green's report, and to a limited extent, the PSR, that Mr. Hodge's amenability for reform is distantly attainable, if at all attainable.

[148] However, the difficulty arises with respect to the uncertainty as to the length of time that it would take to achieve rehabilitation in Mr. Hodge's case. Another concern is that of whether the appropriate and recommended means of achieving such rehabilitation is available and whether the same could properly and adequately be administered within the prison environment. If the object of rehabilitation cannot be

achieved in this way, then clearly, Mr. Hodge would continue to present with a risk profile the level of which may not be ascertainable.

[149] It would be remiss of this Court if it did not, as part of its duty, deal with the question of family impact statements. What purported to be family impact statements were appended to the PSR. Indeed the Crown did not rely on those impact statements at the sentencing hearing, because as learned Queen's Counsel Mr. Thomas Astaphan rightly said, it was not in the place of the Probation Officer to submit them to the court and, if they were to be submitted, they should have been done by way of witness statements, with the authors available for cross-examination. However, in the court's view, the procedure for the preparation and reliance on victim impact statements cannot be overstated.

[150] Victim impact statements are intended to assist the court in assessing the impact of the commission of an offence on the victim or the victim's family in the sentencing exercise. Victim impact statements are useful in enabling the sentencing court to be aware of the harm done by the offender to the victim and the victim's family so that the sentencing judge has a better understanding of the gravity of the offence. Additionally, they are intended to assure victims and their families that the sentencing process includes them by ensuring they are not irrelevant and forgotten. Furthermore, they may provide an avenue for solatium and may be a useful means of bringing closure to a grieving family by providing them with a means to vent and express the emotional hurt and anger at the loss of their love ones.

[151] It is therefore necessary that the sentencing court's knowledge of the harm suffered by the victim or the victim's family serves not only the interest of the victim and their family but also the public interest by ensuring that the sentencing court proceeds only on the basis of salient facts established by cogent and admissible evidence at every stage of the criminal proceedings.

- [152] In the case of **R v Perkins (Robert)**³⁰ certain observations were made regarding the presentation of victim impact statements. It is only trite that a victim impact statement constitutes evidence and must be treated as evidence. It must be in a formal witness statement, served on the offender's legal advisers in time for the offender's instructions to be taken and for any objection to the use of the statement or part of it, if necessary, to be prepared. In addition, just because the statement was intended to inform the sentencing court of specific features of the consequences of the offence on the victim or the victim's family, responsibility for presenting admissible evidence remained on the prosecution. It followed that the statement might be challenged in cross-examination, and it might give rise to disclosure obligations, and might be used, after conviction, to deploy an argument that the credibility of the victim was open to question.
- [153] It has been held that the material contained in the victim impact statement should be admissible material upon which the court can act. Some courts have taken the view that if the victim impact statements contain material damaging to the accused which is neither self-evidently correct nor known by the accused to be correct (and this includes lay diagnoses of medical and psychiatric conditions) they should not be acted on. The prosecution should call the appropriate supporting evidence. It is unfair to present the accused with the dilemma of challenging a statement of dubious probative value, thereby risking a finding that genuine remorse is lacking, or accepting that statement to his or her detriment.
- [154] It is for the sentencing court to carefully assess the assertions of fact contained in the victim impact statement. It has been said that except where inferences can properly be drawn from the nature of or circumstances surrounding the offence, a sentencing court must not make assumptions unsupported by evidence about the effects of an offence on the victim. Therefore, the evidence presented to the court in the form of a victim impact statement should not incline the court to speculate about the consequences of the offence for the victim.

³⁰ [2013] 2 Cr. App. R. (S.) 72

- [155] In the circumstances, and for the reasons highlighted above, the court in the present instance, has not taken the family impact statement into account when considering the degree of harm caused by the commission of the offence or as an aggravating factor present in the commission of the offence. The purported family impact statements appended to the PSR fall woefully short of what is legally required to assist the sentencing court.
- [156] The court accepts the view that where a whole life sentence is at all a consideration, the first factor to be determined is the rehabilitation possibilities of the offender. However, in considering the imposition of a sentence of life imprisonment the sentencing court should take into account: (1) the seriousness of the offender's conduct in the commission of the offence, (2) the expression of genuine remorse, (3) whether the convicted person is fit for social re-adaptation or reintegration into society, (4) the antecedents of the convicted person, and (5) the presence of premeditation.
- [157] Therefore, a life sentence is inappropriate where on a consideration of all the circumstances, the balance is tipped in favour of the convict. The court must be guided by an assessment of the totality of the circumstances surrounding the offending and the offender. Apart from the circumstances of the offence, what must loom large in considering whether a life sentence is appropriate is the possibility or likelihood of the convict being rehabilitated to the extent that he could be safely returned to society. When there is evidence or information to suggest that this goal is achievable, a sentencing court must be slow to incarcerate a convicted person for the rest of their natural life.
- [158] The abovementioned approach was endorsed in **Rudolph Lewis v The Queen**³¹ where the appellant was indicted for the murder of his 21 year old common law wife. He had stabbed her 21 times with a penknife because he had suspected on numerous occasions that she had been unfaithful to him. On conviction he was sentenced to life imprisonment. The sentence of life imprisonment was set aside

³¹ [2012] ECSCJ No. 94

and a sentence of 25 years substituted on appeal. The Court of Appeal found that there was no evidence from the psychiatrist and the social inquiry report that the appellant, on the basis of this murder and his previous history and personality, was a social nuisance, highly likely to commit grave offences of violence in the future. There was therefore no evidence to justify the learned judge's apparent approach, treating the appellant as if he was a danger to society and there was the need to protect the society from him. This was an error the judge made in my opinion. Edwards JA, delivering the judgment of the Court of Appeal said:

"The evidence clearly showed that this was a murder arising out of a deterioration of emotional relationships. There was a lengthy history of discord and mistrust between the appellant and the deceased. The members of his community regarded his crime as uncharacteristic of him. The appellant acted under circumstances of domestic emotional stress which would not measure up to legal provocation, having regard to his level of premeditation, deceit and planning in luring the deceased to the house.

D. A. Thomas in his renowned treatise *Principles of Sentencing: The Sentencing Policy of the Court of Appeal Criminal Division* identifies domestic or emotional stress as significant mitigating factors. He states that: "A frequent explanation of uncharacteristic offences is that they result from acute emotional stress. The most common example is the offence of violence committed against wife or husband, or a third party who has become involved with one of them as a result of a deteriorating marriage. In such cases the circumstances which precipitate the violent act are usually treated as significant mitigating factors." The learned judge did not take this significant mitigating factor into account at all.

The appellant had unusually strong mitigating factors in his favour. In my view the sentence of life imprisonment did not sufficiently take into account the personal circumstances leading up to the offence. "It is a mandatory requirement in murder cases for a Judge to take into account the personal and individual circumstances of the convicted person. The Judge must also take into account the nature and gravity of the offence; the character and record of the convicted person; the factors that might have influenced the conduct that caused the murder; the design and execution of the offence, and the possibility of reform and social re-adaptation of the convicted person. ... The Judge may accord greater importance to the circumstances, which relate to the commission of the offence. However, the relative importance of these factors may vary according to the overall circumstances of each case."³²

³² *Infra* at paras [31] – [33]

- [159] A similar approach, although with different consequences, was applied in **R v Rudy Monelle**³³ where the convicted offender used a catalyst or accelerant to burn his common law wife after he had "knocked her out". The Social Investigation Report painted a picture of the offender as a person who though having a quiet appearance, may not be as quiet as he appears. The Social Investigation Report revealed that the defendant has come from a stable family background but did not do well in school. He presented a reserved picture to members of the public and had a quiet disposition to outsiders. However, the relationship between the offender and his common law wife was not harmonious. There was another view that he was aggressive. There was evidence that the offender and his common law wife had several misunderstandings and were unable to resolve them amicably. She lived in fear. Also, the offender did not get along with the relatives of the deceased and threatened to "wipe them out". The court was provided with a psychiatric report. The psychiatric report did not indicate that the offender suffered from a mental disorder or that his mental condition may, in any way, have been affected. The doctor stated that the offender was mentally stable and was not suffering from any mental illness. There was no evidence of him ever having suffered from any mental condition.
- [160] The sentencing court in **R v Rudy Monelle** took the view that the sentence of life imprisonment was appropriate where the defendant has committed a very violent and serious offence, and where the Probation Report seemed unable to state with any conviction, that the offender could be reformed, and where there was information in the Report that he had threatened to "wipe out" the deceased family. The court was fortified in its view by the Psychiatric Report, since it stated that the offender did not have or ever had any mental condition. In any event, the court adopted the view that the sentence of life imprisonment could also be imposed on a defendant who may have some prospects of social re-adaptation.³⁴

³³ [2008] ECSCJ No. 88

³⁴ *Infra* per Blenman J. at para [29]

[161] The finding of dangerousness by the sentencing judge in **R v Rudy Monelle** seemed to have stemmed from the finding that the offender was a threat to the family of the deceased and that it could not be determined with precision or at the very least with any degree of certainty how long he would have posed such a danger.

[162] In **R v Rudy Monelle**, the judge reasoned that:

“I have no doubt that the Probation Officer was unable to give a conclusion or definite view on the defendant's ability to reform. One thing that is clear is that the Court is uncertain of the effect the counseling is likely to have on this defendant, who has so skillfully manipulated others. I am also of the view that the defendant has been able to conceal his true feelings from his relatives and friends.”³⁵

[163] In sentencing the offender in **R v Rudy Monelle**, the sentencing judge applied the following principled approach:

“The Court has the discretion in sentencing a defendant; the sentence the Court imposes should reflect the seriousness of the offence. A sentencer has a wide range of sentence from which to select for the offence of murder. Indeed, a perusal of the cases from our jurisdiction reflects that our Court has imposed various sentences for the offence of murder, depending on the totality of the circumstances. Life imprisonment for murder is by no means the norm or the starting sentencing. The appropriate sentence is determined based on the particular facts.”³⁶

[164] Similar to the circumstances of the instant case, the court in **R v Rudy Monelle** observed that the crime was not one that was planned for a long time. No one knew exactly what caused offender to act the way he did, but something must have triggered his acts of severe violence and brutality towards the deceased. The judge had no doubt that the crime was savage in its execution and manner. The fact that the deceased met her death in circumstances of domestic violence was not lost on the Court. However, in making a similar observation, the court is mindful of the fact that Mr. Hodge and Ms. Goodwin were not cohabiting at the time and the relationship between them, as far as Ms. Goodwin was concerned, was at an end.

³⁵ Per Blenman J. at para 28

³⁶ At para 40

This places a slightly different hue and contrast on the circumstances of the present case in comparison to the strict domestic violence context.

[165] In **Roger George v The State**³⁷, the Court of Appeal had to consider the appropriateness of the imposition of a discretionary life sentence as opposed to a sentence of determinate term of years in relation to a murder that occurred with the context of domestic violence. The case of **Roger George v The State** underscores the discretion that the sentencing court has when deciding to impose a sentence of life imprisonment.

[166] The appellant appealed his conviction for murder. The facts were that the deceased was the girlfriend of the accused. They had lived together in St. Martin before returning to Dominica in 1998 where they lived separately. The evidence indicated that the deceased had asked the appellant to come to speak to her because she wanted to end their relationship because he was not supporting their child. They met and spoke at the home of a neighbour of the deceased. While they were speaking one Libby passed by. Words were exchanged about a relationship between Libby and the deceased, which was said to have been going on for some time. The appellant left on his motorcycle and within minutes he was seen walking back down the road with the deceased and they sat together on another neighbour's steps. The deceased was then heard screaming repeatedly and the appellant was seen stabbing the deceased. She died before she reached the hospital. The pathologist described her as having received multiple incision wounds involving the left front chest and right posterior upper back, three of these wounds penetrated the chest cavity and the right lung was collapsed.

[167] The appellant's appeal against conviction was allowed and the verdict of murder reduced to manslaughter on the basis that the trial judge had failed to direct the jury in relation to provocation even though it was not raised by the appellant at the trial but arose on the evidence. With respect to the appeal against sentence, the Court

³⁷ [2000] ECSCJ No. 42

of Appeal sentenced the appellant to life imprisonment. Byron CJ delivering the judgment of the Court of Appeal said:

“On the question of sentence, we were asked to exercise leniency and to impose a fixed term of years on a young man of 26 years who could be rehabilitated after serving a custodial sentence. This crime, however, falls within the category of domestic violence. This is a man who killed his woman because she said she was going to leave him and because she had been having an affair with another man for a long time. The community is paying more attention to these crimes which are on the increase. They are particularly horrible and undermine the equal status of women in our society. We have concluded that the maximum sentence allowed by law should be imposed and we order the appellant to serve life imprisonment.”³⁸

[168] The court has formed the view, that in contrast to **Roger George v The Queen**, the circumstances surrounding Mr. Hodge’s offending may properly be regarded as more egregious. It cannot be overstated that Ms. Goodwin’s murder did arise within a domestic violence context. The defences advanced by Mr. Hodge at the trial were with respect to provocation arising from repeated abuse from Ms. Goodwin and provocation by Ms. Goodwin at Windward Point, self-defence and accident. A proposition which the jury clearly did not accept. Mr. Hodge’s perceived notion that Ms. Goodwin was cheating on him was not advanced by Mr. Hodge as part of his defence of provocation at the trial. Additionally, in **Roger George**, the Court of Appeal must have found the seriousness of the offence exceptionally high, even on a conviction for manslaughter, to have considered the imposition of life imprisonment an appropriate sentence.

[169] The Practice Direction provides guidance to the sentencing court with respect to when it is appropriate to impose a whole life sentence. Paragraph 4 of the Practice Direction empowers the sentencing court to pass a whole life sentence where 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 the offender was an adult when he committed the offence. Paragraph 5 of the Practice Direction describes the cases where the seriousness of the offence of murder may be considered exceptionally high.

³⁸ At para 12

[169] Paragraph 6 of the Practice Direction empowers the sentencing court to impose a determinate sentence. A determinate sentence means a sentence fixed as to the amount of time to be spent imprisoned. This part of the Practice Direction empowers the court to pass a determinate sentence even where the court finds that a case falls within paragraph 4, but the court considers that the offence (or the combination of the offence and one or more offences associated with it), does not warrant a whole life sentence, and the offender was an adult when he committed the offence. Where the court determines that paragraph 6 of the Practice Direction applies, the appropriate starting point is a determinate sentence of 40 years, within a range of 30-50 years. Paragraph 7 of the Practice Direction describes the cases which would fall within paragraph 6.

[170] The court having determined the seriousness of the offence to be exceptionally high does not see the requirement to have regard to those parts of the Practice Direction that deal with determinate sentences. The court has formed the view that the application of those parts of the Practice Direction are ill suited and inapplicable to the totality of the circumstances giving rise to Mr. Hodge's offending. In any event, even if the court were to apply the provisions of the Practice Direction that guide the imposition of a determinate sentence, the resulting sentence would be inappropriate to meet the justice of the present case.

[171] The offence of murder for which Mr. Hodge stands convicted involved and was associated with a series of serious criminal acts all forming part and parcel of one transaction. Part of the series of serious criminal offences committed by Mr. Hodge were of a most sadistic nature to say the least. Mr. Hodge's conduct involved stalking Ms. Goodwin, home invasion or breaking and entering Ms. Goodwin's apartment, causing Ms. Goodwin serious bodily harm perhaps even bordering on attempted murder according to the forensic evidence, and ultimately stabbing her in the back. Thereafter, Mr. Hodge attempted to conceal the commission of those associated criminal acts by removing Ms. Goodwin's then unconscious body to Windward Point. At Windward Point he delivered the coup de grace that ended Ms. Goodwin's life. Therefore, it can fairly be said that Mr. Hodge's conduct that

resulted in the death of Ms. Goodwin was closely associated with a series of prior serious acts perpetrated by Mr. Hodge against Ms. Goodwin. The court has already painstakingly illustrated the savage, brutal, merciless, callous, barbaric infliction of harm endured by Ms. Goodwin during her ordeal. In the circumstances, the court has no doubt that Mr. Hodge's offending falls squarely within the category of exceptional seriousness contemplated by paragraph 4 of the Practice Direction and illustrated by paragraph 5 thereof.

[172] The court has already highlighted the approach to be taken if the sentencing court considers that life imprisonment is the appropriate sentence to be imposed. In the court's view, Mr. Hodge's youthful adulthood, his previous good character, and clean criminal record, cannot tip the scales in his favour given the harm associated with his offending and his degree of criminal culpability in the commission of the offence. In the premises, the sentence of the court is that Mr. Hodge be sentenced to life imprisonment.

[173] Mr. Hodge has spent a period of 913 days on remand. Therefore, this period of 913 days on remand will be deducted from the total period of incarceration to be served by Mr. Hodge.

[174] The court has considered the provisions of section 12(2)(a) of the Parole of Prisoners Act.³⁹ In the circumstances, Mr. Hodge will not become eligible for parole before he has served a period of 30 years imprisonment.

Shawn Innocent
High Court Judge

By the Court

Registrar

³⁹ R.S.A. c. P3