

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON ANTIGUA & BARBUDA

CASE ANUHCR 1997/0033

REGINA

V

WILSON ADAMS

APPEARANCES

Ms Shannon Jones-Gittens for the Crown.

Mr Wendel Robinson for the defendant.

2021: MAY 4

PRE-SENTENCE RULING

Concerning manslaughter by reason of diminished responsibility

by paranoid schizophrenic killing tourist-teacher on beach

- 1 **Morley J:** Wilson Adams aged 57 (dob 19.09.63) falls to be sentenced as a paranoid schizophrenic for manslaughter by reason of diminished responsibility. The event occurred on 08.01.97, when he was 33. The victim was Gabrielle Stocker, a tourist-teacher, aged perhaps 60. At Sand Haven beach where she was sunbathing, randomly it appears, he mistook her for a big dog, bashing in her head with a rock, stabbing her chest, and cutting her throat. Mr. Adams has been incarcerated since that date, for 24 years and four months to today, being about two years at the local prison '1735', and then at Clarevue psychiatric hospital. He was found by a jury on 26.09.97 insane and, therefore, unfit to plead to an indictment alleging murder. There

has been no review of his mental state offered to the court before one dated 22.10.20 when Dr. Griffin Benjamin found Adams, under current medical regime, to be now fit to plead. On 22.02.21, the Crown and eventually the court accepted a plea to manslaughter, with the case being opened and mitigated on 30.04.21, and adjourned to today 04.05.21 for sentencing remarks to be in writing.

- 2 This is a highly unusual case and lays bare how legislation on Antigua is in need of reform to deal better with sentencing a defendant who has a significant mental health issue. The first problem is that the maximum prison sentence for manslaughter is 35 years, not life as on all other eight island nations within the ECSC¹. Second, there is no power available to the court to pass a hospital order, as in the UK. In sharper focus, having been incarcerated 24.3 years, it is arguable theoretically Adams has served more than 35 years already, as he would be entitled to one-third remission if of good behaviour so that the ordinary maximum served would be less than 24 years. With there being no power to pass a hospital order, when Dr. Benjamin opines Adams remains dangerous if not medicated, the court must contemplate passing a sentence on Adams which may mean he is released while presenting a risk of serious harm to the public. What is the proper action to take?

The facts in 1997

- 3 Wilson Adams had once been a police officer for 13 years. He was of quiet disposition and a good artist, who had helped to catch criminals through his talented drawings of suspect descriptions offered by witnesses. In 1995, he had a mental breakdown in a theology college in Trinidad, returning to Antigua in 1996 straight to Holberton Hospital. He has no previous convictions.
- 4 In 1997, Gabrielle Stocker from the UK, living at Bendalls Road, St Johns, had been teaching A-level science at the Antigua State College, known closely to Mary Gleadhall for about year. All efforts by Antigua police and the probation service to trace the family of Ms. Stocker to alert them

¹ Eastern Caribbean Supreme Court.

to this hearing, including contact with the British High Commission and with Social Services in the UK, have most regrettably been unsuccessful.

- 5 On 08.01.97, Whiton Welcome was a beach patrol officer. At about 3pm, he saw Gabrielle spread her towel on the beach west of the pump station for West Indies oil. He knew Adams, whom he observed had a bicycle, acting oddly. At 3.30pm he watched him seeking to look for something, then sit close to Gabrielle who was seated reading. Next, Adams picked up a piece of 2x4 wood, 3ft in length, and struck her from behind to the back of her head, causing her to fall flat backwards. Then, Welcome saw Adams seize a white flat stone and begin striking her head and face. Welcome began to run toward the scene with another, and seeing him advance Adams took out a knife from his pants pocket, opened its blade, the knife being 6 inches, stabbed Gabrielle's chest twice, and then cut her throat with two slashes. Adams fled, taking his bike, was pursued, threw stones, ran into the Lobster Pot restaurant, where he was restrained, being tied hand and foot awaiting police.

- a. Hotelier George Harper tried to assist Gabrielle, whose mouth was full of blood, and was present when she drew her last breath. At 5pm, Dr. Delrose Christian pronounced her dead at the scene, noting multiple injuries and in particular a 10x4cm laceration across Gabrielle's neck. At post mortem examination, she had nine injuries, being one contusion 5"x4" to the right side of the face around the eye, and eight incised wounds, being as above to the neck, and then 3/4"x12" to the left side of chest, 1"x1/4" to the right side of chest, 1/2"x1/4" to right side of chest, to the front right shoulder, 1"x1/4" to the left shoulder, 4"x1" to the forehead, and 3"x1" to the right eyebrow. In addition, there were multiple skull fractures to the frontal bone, anterior cranial base, and middle cranial base. From the sustained savagery of the attack, fracturing the skull, stabbing the chest, and cutting the throat, there can be no doubt Adams intended to kill Gabrielle.
- b. The wood and stone were recovered but the knife not as Adams had thrown it away.
- c. At the Lobster Pot, when police arrived, Adams said to PC 194 Raymond Findlay, *'I heard voices telling me to kill the woman'* and to Cpl 354 Kelvin Thompson, *'I don't know what is*

going on, I can't believe this is happening to me, somebody tell me what happen'. At the police station, he told PInsp Albert Smith he had thrown away the knife.

- d. On 09.01.97, at 11.15am, at the CID offices Adams told PInsp Smith he wanted to see attorney Harold Lovell, who came for 12.15pm, but whom Adams decided he no longer wanted. Adams then made a police statement at 1.20pm, saying he had seen a doctor earlier in the day on 08.01.97, suffering head problems, leaving in some confusion. He said he ended up at the beach, saw a lady, he remembered going up to her, in a state of rage, though not recalling what happened after, next recalling a crowd throwing stones at him, being struck by a car, being beaten, and being relieved when police came.
- e. On 10.01.97, he was examined by psychiatrist Dr. Mathurine Jurgensen, who reported to the Magistrate on 04.06.97: *'...he was suffering from a psychotic illness. He was out of touch with reality in that he was experiencing hallucinations, voices that were not present in reality. I cannot determine with certainty what his state of mind was prior to my examination. I can say most likely his condition has been ongoing for some time. But I am not in a position to say for how long prior to my examination this condition existed. I can say that I had seen him in November 1996 and had started him on treatment for his mental illness. I cannot say for certain what his state of mind was exactly on 08.01.97 at 3.30pm having not seen him at that time'.*
- f. Also on 04.06.97 before Magistrate Clare Henry-Wason, Adams made a statement, saying at the beach he recalled seeing a lady, and feeling depressed and disappointed, he then saw a large dog, which made him angry, and he kicked it, whereupon people came toward him, he asked what happened, he protested 'it's a dog', they started laughing, he went willingly to the Lobster Pot, never threw any stones, awaited police, he denied killing anyone, there had been no blood, he denied having a knife, and the incident had only ever been about a dog which he had kicked and it had made no sound.
- g. On 26.09.97, in the High Court, Adams was formally *'found to be insane and unfit to take his trial by the jury sitting in the criminal circuit for the offence of murder contrary to common law*

and ordered to be detained in safe custody at Her Majesty's prison or upon completion of secure facilities thereat at the mental hospital until Her Majesty's pleasure is known'. Under court warrant he was then placed in prison to be moved to Clarevue.

The proceedings since 1997

- 6 Then, for 23 years nothing more happened by way of court update. Instead, Adams spent about two years at 1735, was then moved to Clarevue, and has been since under their expert care, led by the able Dr. James King. No judge called for a regular report; the matter slipped from Registry attention. Being held at 'Her Majesty's pleasure' is more accurately understood as meaning at the court's pleasure, and the court did not keep itself informed.
- 7 Being so detained should not mean a person enters Clarevue never to be further considered. The purpose of Clarevue is to provide treatment, in an environment keeping a patient and the public safe, observed by this court when visiting the hospital to be ably done, in difficult circumstances for which the staff are to be commended. That treatment may improve the mental health of the patient so the patient may better then understand criminal proceedings and what it is alleged they have done. Being found unfit to plead means a person's mental health prevents them understanding such proceedings. Every patient under warrant, having been found unfit to plead, should be regularly reviewed by the court, at least annually, as happens for example on Montserrat, to see if treatment has meant the proceedings can continue because the patient can now better understand them. There are still criminal proceedings at large, stalled. A finding in 1997 Adams was then unfit should not mean his status is never considered by the court again.
- 8 Patients at Clarevue long detained for being unfit, without review, began coming to the attention of the court in 2019, with the cases of Lenmore Horsford on 13.02.20 and Craig Jarvis on 20.11.19². Antigua being a small community, word reached Adams' family Clarevue cases were being reviewed. The family asked Magistrate Dexter Wason, who in 1997 had been in private practice and knew then of the case, to bring it to the attention of the High Court. The case was

² See R v Craig Jarvis 2019 ANUHCR 2008/0049 at <https://www.eccourts.org/regina-v-craig-jarvis/>.

listed before me on 18.02.20, when a psychiatric review was ordered, allocated to Dr. Benjamin on Dominica as there was a dispute between Dr. King and the Registry. Covid then struck from March 2020, causing the report to be delayed until 22.10.20. On 29.10.20 Counsel Robinson kindly decided in the best traditions of the Bar to act pro bono, there being no legal aid available, as he had known Adams as a police officer years before.

9 In his report of 22.10.20, Dr. Benjamin said of Adams:

This report is presented for the purpose of determining fitness to stand trial and cognitive test after 23 years of inpatient treatment at the Clarevue Psychiatric Hospital in Antigua...Adams was diagnosed as suffering a major psychiatric illness, schizophrenia. He has a clinical history of psychotic illness characterised by paranoid persecutory type delusions and periods of disorganisation behaviour. He has been on supervised psychiatric care receiving antipsychotic medications of depot fluphenazine, oral haloperidol, seroquel and anticholinergic benztropine over an extended period of time. At the time of this assessment he presented with no gross features of psychosis and exhibited a positive attitude towards this therapist as he was responsive and cooperative. He was able to give a clear account of the incident related to his hospital order over 20 years ago. Mini-mental state examination (MMSE 25/30) consistently indicated no significant cognitive impairment. He was well organised and demonstrated no intense disturbance of mood, thoughts or behaviour on any of the evaluations. He does not suffer from any chronic medical or cognitive impairment. He seemed capable of caring for his personal hygiene and environment and over this extended period of inpatient psychiatric hospital care he reportedly demonstrated a high level of clinical stability and compliance with medication treatment...He blamed his mother for his detention at the hospital [saying] 'my mother, the psychiatrist and others convinced the judge I had a mental problem'.... Over the years he seemed to have had a reliable relationship with his sister Sharon Adams...When informed of his sister's account of his abnormal behaviour prior to his detention and treatment he discounted her testimony claiming 'nothing wrong with me'.... His account of the incidents which led to the Antigua charges were baffling 'two men tied me up and called the police, they charged me for killing a white woman but no body was found...' He demonstrated no sense of responsibility or regret and showed little regard for his long inpatient stay...It is my opinion Adams is mentally competent and fit to stand trial at this time. After 23 years of inpatient psychiatric care, he does not have any active features of psychosis that could impact on his mental competence to respond to the charges against him. He does not seem to have any sense of responsibility or awareness of the incident. Furthermore

I consider that his prolonged detention at the psychiatric hospital could have had an adverse impact on his sense of responsibility for the serious nature of the charges made more than 20 years ago.

- 10 On 13.11.20, the Crown reported to the court they would accept a plea to manslaughter by reason of diminished responsibility. The court pointed out it would need separately to consider whether such a plea would be acceptable, calling for submissions on the sentencing options under Antigua legislation, both counsel then reporting there is no current member of the Bar who has dealt before with a 'diminished plea'. Submissions were received on 26.11.20 from the Crown, though merely a brief email, and in greater detail from the defence on 27.11.20, though neither examined the **Mental Treatment Act 1957** cap 274.
- 11 Counsel Robinson reached out to Dr. King, as did the court, who on 07.12.20 helpfully emailed informally a measure of assessment concerning Adams. It noted: *'...psychotic people...know how to manipulate others if and when needed...At baseline, Mr. Adams has limited insight into his behaviours (even after years on medication) and of course denied and continues to deny having done anything wrong despite being in Clarevue for many years. He will need supervised medication management indefinitely.'*
- 12 On 21.01.21, to determine the propriety of a diminished plea there was detailed inquiry of Dr. Benjamin via zoom by the court. He explained as well as being a psychiatrist, he is a public health specialist of more than 20 years, Adams is schizophrenic, if on medication he does not present excessive danger to the public, but if off it, may kill again. He will need at least an injection of depot fluphenazine every three weeks, by a community nurse or at Clarevue. In his opinion, Adams' schizophrenia was likely genetically predisposed, in combination with something having happened to him, though could not say what, and was likely inherent and chronic in Adams by 1996.
 - a. Together with Dr. Benjamin, there was analysis of diminished responsibility, as it appears in statute at **s11(1) Offences against the Person Act 1873** (as amended) cap 300, which states:

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

- b. The evidential burden rests with the defence and must be established on a balance of probabilities by showing that it was more probable than not that the defendant was suffering from such abnormality of mind as to substantially impair his mental responsibility for this acts and omissions in doing the killing. In **R v Byrne 1960**, Lord Parker CJ interpreted 'abnormality of mind' in the following authoritative statement as³:

...a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal. It appears to us to be wide enough to cover the mind's activities in all its aspects, not only the perception of physical acts and matters, and the ability to form a rational judgment whether an act is right or wrong, but also the ability to exercise will-power to control physical acts in accordance with that rational judgment. The expression 'mental responsibility for his acts' points to consideration of the extent to which the accused's mind is answerable for his physical acts, which must include a consideration of the extent of his ability to exercise willpower to control his physical acts.

- c. The question then becomes whether on balance the abnormality of mind was such as to substantially impair the defendant's mental responsibility for his acts in doing the killing. The test for substantial impairment was set out in the case of **R v Lloyd 1967** in the following explanation⁴:

Substantial does not mean total, that is to say the mental responsibility need not be totally impaired, so to speak, destroyed altogether. At the other end of the scale substantial does not mean trivial or minimal. It is something in between...

- d. On Dr. Benjamin's analysis, considering the killing, Adams' paranoid schizophrenia was an 'abnormality of mind' arising from an 'inherent cause', being genetic predisposition, which 'substantially impaired' his 'mental responsibility for his acts'. The abnormality was Adams

³ R v Byrne 1960 2 QB 396 at p403.

⁴ R v Lloyd 1967 1 QB 175 at p181.

heard a voice, telling him to do the killing, so that he was not acting entirely of his own volition, it inspired his acts, thereby substantially impairing the nature of his conduct by impairing his rational judgment and ability to exercise self-control, acting instead fully under the instruction of the voice, not appreciating the responsibility attached to his actions for which there would be consequences. As Dr. Benjamin put it pithily, *'I don't think he understood he was killing her'*, adding under questions from Counsel Robinson (the Crown asking none), *'I would conclude Adams probably was not acting with an understanding of the full implications of his actions, it is my belief his mental condition impaired his judgment to think or plan and to understand their consequences'*, all of which would mean his responsibility was diminished, as expressed in the Act.

- e. Having fit the events into the framework of what is diminished responsibility, Dr. Benjamin went on to explain Adams troubles him for his lack of insight or regret or sense of responsibility for what he did, even after more than 20 years of inpatient care. If more aware of his actions he would understand better not to do it again. His lack of awareness leads him to worry he might. Pointedly, if he stops taking his medication it would mean he has stopped taking responsibility for what he did, making it more likely he may reoffend.
- f. At the end of the hearing, in light of the detailed observations of Dr. Benjamin, and there being encouragement from the Crown, the court finally indicated it would accept the plea.

13 On 22.02.21, Adams entered his plea, and a pre-sentence report was ordered, along with information on the impact of Gabrielle's death on her family, if they could be traced (which as above regrettably, they could not).

14 On 24.02.21, there was a further helpful note from Dr. King:

Wilson Adams' sister [*Sharon*], if possible, should be made responsible for his aftercare. See to it that SHE brings him for all outpatient appointments and oversees him taking prescribed meds. If I recall correctly, she has power of attorney. He also inherited money from a family member in the UK. If she is not held responsible I do not see how Mr. Adams is going to function on his own if the court releases him. As stated before, we do not trust him, this while on medication and having members of staff around. He can appear quite unassuming and will say whatever is

needed to whomever is in front of him at that time. Both Mr. Adams and his sister...have limited insight into his illness and its repercussions. They basically just want him released not really caring of the consequences to the court or society at large...As reported before, he has been quite inappropriate with female staff. He's going to be mingling with any and everybody if he is released. It's impossible to monitor his behaviour. I'm clearly not a lawyer but MAYBE his attorney can draft a document (providing the court/DPP/Clarevue with copies) holding his sister responsible for all aftercare and if she does not follow through it will be reported to the court/DPP and he will be readmitted to Clarevue. He has a history of violence which increases the chances of it occurring again. Alternatively, perhaps grant him psychiatric parole whereby he remains in Clarevue but he's allowed to come out daily from 8:00 am to 2:00 pm (and has some freedom) under the direct supervision of a family member, this way he continues to get his meds and if he does not return the police will be notified to return him. If no family member is available, he will not be allowed to leave the compound unescorted. He cannot be allowed to be on his own. There is no clear cut solution.

- 15 On 11.04.21, Dr. Benjamin filed a further report, considering what in his opinion is the realistic disposal available to the court:

Recommendations

These recommendations...seek to highlight the process and nature of the continuity of psychiatric care services that could be required by Mr. Wilson Adams on his discharge from the Psychiatric Hospital and also consider his subsequent re-integration into his family and community.

Access to Outpatient Services

On the island Antigua, the Government provides public psychiatric service that is accessible to the whole population of Antigua, citizens and residents alike. These services are delivered in two public health settings.

1. Psychiatric Hospital: most of the public resources are located at this point of service delivery. It responds to emergency psychiatric needs of the vulnerable population and provides follow up clinical services to persons who may need continuity of psychiatric and mental health care to maintain their mental and social stability.
2. Primary Health Care Services: at this level public health providers deliver basic psychiatric/medical care. It is expected that service users (patients) seen at or discharged from the Psychiatric Hospital should access the primary care clinics in their individual communities for continuity of care and support.

Degree of Supervision Required

Mr. Wilson Adams suffers with Schizophrenia and has followed a rigid supervision program for the past twenty-three years at the psychiatric institution. He was ordered to comply with medication treatment in a controlled environment. This is significantly different than a home or community setting where he may be required to attend or visit the Clinic. However, in the public health system this arrangement is usually a voluntary relationship between the health care provider and the service user (patient).

In order for Mr. Adams to maintain mental stability, he will need to 1) comply with medical regimen of neuroleptic medications and 2) adhere to regular clinic appointments. Compliance with medication treatment will increase his level of mental control/stability as happened in the Psychiatric Hospital. Adherence to regular clinic reviews will provide increased assurance that 1) he may not suffer unwanted relapses and 2) assist the medical personnel to monitor high risk factors that may lead to relapses such as use and misuse of psychoactive drugs, social destitution and family support.

Responsible Supervising Agent

Pursuant to the *Mental Treatment Act of Antigua Chap 274*, the Government appointed Psychiatrist has legal responsibilities to supervise the psychiatric care of any known or legally defined psychiatric case within Antigua. The Psychiatrist is therefore responsible for the treatment of a patient in their care; and the authority to treat this patient is established within a Psychiatric Hospital setting. Mr. Adams' longstanding history of psychiatric treatment at the Psychiatric Hospital and under the care and management of a Psychiatrist confirms his clinical status.

Section 36(1) of the above mentioned Act gives the Governor-General the discretion to order the absolute or conditional discharge of any patient, whether recovered or not. However, where the Medical Superintendent certifies that this discharge is unsafe, the patient shall be deemed a *government-aided patient* and the Court may order that person's detention in a mental hospital as a government-aided patient. In this regard, Mr. Adams' discharge from the Psychiatric Hospital is a Court decision.

Provided that Mr. Adams is discharged, it is expected that he gets follow up appointments with the Psychiatrist to continue psychiatric care as an outpatient. The public psychiatric system has a duty of care to continue supervision within the public health system. It must be noted that once discharged, certified as safe and allowed to be at large, Mr. Adams may also choose to seek alternative psychiatric care or consult.

Family Responsibility

Continuity of care is usually based on the public health principles of public participation and involvement in the process of care. Families and communities are expected to provide support to their family members.

In this case of Mr. Adams' reintegration into family and social support systems, community psychiatric services will rely heavily on family daily supervision especially during the first three to six months of discharge from the Psychiatric Hospital. They should be held responsible for an initial fortnightly visit to clinic either at the Psychiatric Hospital or the Community Clinics. After the first four reviews, appointments may be spaced out to monthly visits based on his mental and social stability.

- 16 On 22.04.21, Senior Probation Officer Alvin Jarvis filed his report which notes three of Adams' four siblings will try to assist him - Sharon 59, Melrose 50, Connie 45 – and he would reside with Sharon, if released, who will take lead personal responsibility, with the other two and her children, to ensure Adams remains medicated; however the fourth sibling Marillo, also living with Sharon, would not respond.

a. In reviewing Adams, SPO Jarvis wrote:

...According to the defendant he socialises with other patients but keeps his associates to a minimum, and does not consider himself an aggressive or violent person. Admittedly there were occasions in the past including while at the institution when he responded violently to situations after he was provoked. The defendant felt satisfied that his actions were appropriate because the persons who were at the receiving end of his wrath went too far in terms of provoking him in one way or another. Although the events were years apart both parties received injuries to their head and upper part of their bodies. It would appear that the defendant understands what it means to feel remorseful and maintains he has no such feelings for the victim. However he is fully aware that his problematic behaviour will result in an increased dosage of medication which he absolutely detests. Therefore he learned to restrain himself. In terms of the offence for which he was charged the defendant denied the allegation, claiming he was out fishing at the time. In the context of his behaviour if released into the community, the defendant stated he has no desire to hurt anyone....The defendant expressed the view that he has been in the institution for too long and believes he should be released. Confident of the support of his family he will try his best to secure a job and lead a normal lifestyle. In the interim he has sufficient financial resources to

provide for his needs and will not become a burden on the state. Concerns about the continuation of his medication regiment was raised with the defendant to which he replied that this is something he is prepared to keep up. His desire to have a female companion is also a primary focus of the defendant and is a worrying concern of the staff along with his propensity for violent episodes.

- b. Moreover, Clarevue expressed grave concerns about Adams' release, reported as follows:

The medical staff at Clarevue hospital are extremely apprehensive at the mere thought of the defendant being released into the community. This is because he is deemed to be an extremely violent and dangerous person. He is said to also display behaviour consistent with a person who will not hesitate to commit acts of rape. It is reported that not only has he expressed lewd sexual overtones towards several female members of staff, but some claimed that he looks at them in a sinister manner. Given all that transpired in terms of his psychiatric condition, coupled with his apparent desire for female affection, there is a strong possibility he will reoffend.

- c. SPO Jarvis concluded:

It leads one to believe that he will not be as compliant outside of the institution because no sanctions would be imposed by his family members, and among the important factors for his calm disposition is the medication. Based on past experiences persons have a tendency of saying the right things but after their objectives are satisfied there is no guarantee the promises will come to fruition.

17 On 30.04.21, there was discussion during 2.5 hours, via zoom, with contributions as to disposal from both counsel, SPO Jarvis and from Dr. Benjamin. Eventually, the consensus offered was the court should pass a determinate sentence and leave mental health treatment to the Antigua health service.

18 Before turning to a wider discussion on what should be the sentence, the court would like to express its gratitude to Dr. Benjamin and to SPO Jarvis, who have both made significant contributions on how to proceed. And further the court also expresses its gratitude to Dr. King, well known to this judge, for his notes and contributions. His opinions have always been highly reliable, and the court expresses regret and disquiet there is a persisting dispute with the Registry which has led to communication sensitivities, when the role of Dr. King on Antigua in

charge of Clarevue is so very important. I would ask please further efforts are made to settle matters happily.

Discussion on disposal

19 In discussing disposal, the first observation, from extensive review, is Adams remains dangerous if off his medication. Any sentence ought to ensure he continues on it, whether as an in- or outpatient.

20 Next, there are not yet sentencing guidelines for plea to manslaughter by reason of diminished responsibility, though there are previous sentences within the ECSC, notably the cases of **R v Germaine Sebastien 2006**⁵, **R v Andrew Richardson 2011**⁶ and **R v Michael Edmunds 2016**⁷.

21 In addition, the maximum sentence for manslaughter on Antigua is 35 years, per **s5 Offences against the Person Act 1873** supra, which in old language says:

Whosoever shall be convicted of manslaughter shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding thirty-five years, with or without hard labour, or to pay such fine as the Court may award, in addition to or without any such other discretionary punishment as aforesaid.

22 In the UK, there is the power to sentence the defendant to be placed in a psychiatric hospital. The **Mental Health Act 1983** allows a judge to pass a hospital order, with restriction, as follows:

37 Powers of courts to order hospital admission or guardianship.

(1) Where a person is convicted before the Crown Court of an offence punishable with imprisonment...and the conditions mentioned in subsection (2) below are satisfied, the court may by order authorise his admission to and detention in such hospital as may be specified in the order or, as the case may be, place him under the guardianship of a local social services authority or of such other person approved by a local social services authority as may be so specified.

⁵ R v Germaine Sebastien 2006 case no 4 of 2006, on 03.03.06, a decision of Hariprashad-Charles J (as she then was).

⁶ R v Andrew Richardson 2011 case SLUHCRD 2009/0122, on 13.07.11, a decision of Benjamin J (as he then was).

⁷ R v Michael Edmunds 2016 case SLUCRD2012/0667, on 16.12.16, a decision of Cumberbatch J.

(2) The conditions referred to in subsection (1) above are that—

(a) the court is satisfied, on the written or oral evidence of two registered medical practitioners, that the offender is suffering from mental disorder and that either—

(i) the mental disorder from which the offender is suffering is of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment and appropriate medical treatment is available for him; or

(ii) in the case of an offender who has attained the age of 16 years, the mental disorder is of a nature or degree which warrants his reception into guardianship under this Act; and

(b) the court is of the opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the offender, and to the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of an order under this section.

(4) An order for the admission of an offender to a hospital (in this Act referred to as “a hospital order”) shall not be made under this section unless the court is satisfied on the written or oral evidence of the approved clinician who would have overall responsibility for his case or of some other person representing the managers of the hospital that arrangements have been made for his admission to that hospital, and for his admission to it within the period of 28 days beginning with the date of the making of such an order; and the court may, pending his admission within that period, give such directions as it thinks fit for his conveyance to and detention in a place of safety...

(6) An order placing an offender under the guardianship of a local social services authority or of any other person (in this Act referred to as “a guardianship order”) shall not be made under this section unless the court is satisfied that that authority or person is willing to receive the offender into guardianship.

(8) Where an order is made under this section, the court shall not—

(a) pass sentence of imprisonment...in respect of the offence...,

41 Power of higher courts to restrict discharge from hospital.

(1) Where a hospital order is made in respect of an offender by the Crown Court, and it appears to the court, having regard to the nature of the offence, the antecedents of the offender and the risk of his committing further offences if set at large, that it is necessary for the protection of the public from serious harm so to do, the court may, subject to the provisions of this section, further

order that the offender shall be subject to the special restrictions set out in this section, and an order under this section shall be known as “a restriction order”.

(2) A restriction order shall not be made in the case of any person unless at least one of the registered medical practitioners whose evidence is taken into account by the court under section 37(2)(a) above has given evidence orally before the court.

(3) The special restrictions applicable to a patient in respect of whom a restriction order is in force are as follows—...

(c) the following powers shall be exercisable only with the consent of the Secretary of State, namely—

(i) power to grant leave of absence to the patient...;

(ii) power to transfer the patient... and

(iii) power to order the discharge of the patient...;

and if leave of absence is granted ...power to recall the patient ...shall vest in the Secretary of State as well as the responsible clinician; and

(d) the power of the Secretary of State to recall the patient ...and power to take the patient into custody and return him...may be exercised at any time;...

(6) While a person is subject to a restriction order the responsible clinician shall at such intervals (not exceeding one year) as the Secretary of State may direct examine and report to the Secretary of State on that person; and every report shall contain such particulars as the Secretary of State may require.

23 A hospital order with restriction would mean after having reports from two doctors, with one giving evidence, in theory I could order Adams restricted to a psychiatric hospital, where for the public he could be kept safe on medication, with annual reviews, and not to be released unless said by doctors to be safe to the public, with the agreement of the equivalent of the Home Secretary who on Antigua is the Attorney General. However, there is no equivalent power on Antigua & Barbuda. What this means, as counsel agree, is I cannot order Adams to stay at Clarevue.

24 In this assessment, I make it clear my preference is for Adams to be the subject of a restriction order, required to remain at Clarevue until certified safe to release, but this is not an option. The reason a restriction order would be appropriate is the killing was particularly horrendous, its

- randomness, suddenness, and savagery capable rightly of striking fear into the hearts of the public they or their children might be next. Adams should not be released unless the doctors say he is safe, which they do not at present, specifically if off medication, which in my judgment cannot be expected to be solely the responsibility of his well-meaning sister marshalling her children and siblings.
- 25 Instead, the stark reality is on Antigua I can either sentence Adams to imprisonment or to probation.
- 26 The power to pass a probation order arises from **s2(2) Probation of Offenders Act 1921** cap 345, which reads:
- Where any person has been convicted on indictment of any offence punishable with imprisonment, and the Court is of opinion that, having regard to the character, antecedents, age, health or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, the Court may, in lieu of imposing a sentence of imprisonment, make an order discharging the offender conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour and to appear for sentence when called on at any time during such period, not exceeding three years, as may be specified in the order.
- 27 On the one hand, technically, and perhaps as a gigantic stretch of the purpose of such power, a probation order of the maximum of three years might arise in this case, having regard to the 'mental condition' of Adams, and to the 'extenuating circumstances' of his having been incarcerated already for 24 years, so that it is at this stage 'inexpedient to inflict any punishment', meaning now he should be discharged 'conditionally on his entering into a recognizance with or without sureties, to be of good behavior and to appear for sentence when called on'. Such a sentence would at least allow the court to set stringent conditions on him as part of the recognizance, and perhaps on members his family acting as surety, to take his medication, or be breached, with likelihood of being imprisoned.
- 28 However there are four obvious problems with a probation order.

- a. Imprisonment for breach may be toothless as arguably he has already served the maximum, and could only arise if time spent incarcerated does not count, which may be unfair.
 - b. The order would have to be limited to three years, which is not long enough.
 - c. Probation would mean release of Adams, knowing he may be dangerous if off his medication, which the probation order would be designed to ensure he takes, though realistically with little formal measure of compulsion or safety if merely controlled by his sister.
 - d. The right-thinking public would likely balk at a probation order for this offence, to lead later to 'discharge', no matter the extenuating circumstances.
- 29 For the above four reasons probation will not arise, notwithstanding lengthy discussion of the possibility and at early point it being urged on the court by Counsel Robinson.
- 30 In addition, it is not possible to pass imprisonment with probation after, as on Antigua probation contemplates discharge with no prison sentence unless the probation order is breached.
- 31 The court is therefore left with imprisonment alone, where the maximum is 35 years.
- 32 Turning to case precedent as above, in *Sebastien* the sentence was life imprisonment, not available here, on a diminished plea given persisting danger to the public, though the facts were similar in that on BVI a paranoid schizophrenic randomly cut the throat of a boy aged 6. Then in *Richardson*, the sentence was 9 years where the defendant with a 'schizotypal personality disorder' on St Lucia killed his mother. And in *Edmunds*, the sentence where a schizophrenic with long psychiatric history on St Lucia struck an acquaintance with a stick to the head following an argument in a bar, was to be held for at least 10 years 'at the court's pleasure', not available here, and not to be released unless the court is satisfied he is no longer a threat. In sum, the cases are different in facts or available sentencing framework.
- 33 Before constructing the sentence, there needs next to be consideration of the **Mental Treatment Act 1957** supra (MTA), particularly as Dr. Benjamin has urged attention to it in his report of 11.04.21 and in his oral contribution on 30.04.21.

Section 2

In this Act...

- "government-aided patient" means any mental patient the expenses of whose care and treatment are wholly chargeable to the public funds of Antigua and Barbuda...
- "person of unsound mind", "mental patient"... includes-...
 - (a) any epileptic...
 - (b) any idiot...
 - (c) any imbecile...
 - (d) any feeble-minded person...
 - (e) any moral defective, that is to say, a person in whose case there exists mental defectiveness coupled with vicious or criminal propensities and who requires care, supervision and control for the protection of others;...

Section 4

(1) Any Magistrate, upon the information upon oath of any informant to the effect that the informant has good cause to suspect and believe and does suspect and believe some person to be of unsound mind and a proper subject for confinement, may, in any place which he deems convenient examine such person, and, in the same place or elsewhere, may hold an enquiry as to the state of mind of such a person...

(4) If, at any stage of an enquiry under this section, it shall be shown to the satisfaction of the Magistrate conducting such enquiry that the person alleged to be of unsound mind is a person whom it is expedient to put immediately under confinement pending the conclusion of the enquiry, it shall be lawful for such Magistrate either *proprio motu* or at the request of the informant-

- (a) to make a written order for the detention of such person during a period which shall not exceed fourteen days in an institution;
- (b) from time to time, on good cause shown to make further orders for such detention, in the like form, for periods none of which shall exceed eight days:
Provided that no such person shall be detained under observation for more than two months at a time;
- (c) at any time, by order under his hand, to direct that the person detained be released...

(6) The Magistrate shall also appoint two registered medical practitioners to examine the suspected person and shall furnish such medical practitioners with all the information bearing on the mental state of the suspected person which he has been able to procure and such medical practitioners shall, if they consider the facts warrant them in so doing, sign separate certificates certifying that in their opinion the suspected person is of unsound mind. Each such certificate shall specify in full detail the facts upon which the person signing it founds his opinion, and shall distinguish facts which he has himself observed from facts communicated by others. The person signing each certificate shall enquire of any persons able to give information as to the previous history of the suspected person, and shall state in his certificate all matters known to him which he deems likely to be of service with reference to medical treatment...

Section 5

(1) Notwithstanding the provisions of section 4, whenever a Magistrate considers it expedient, either for the public safety or for the welfare of any person with respect to whom an information on oath under the said section has been laid, that such person should be forthwith placed under observation, he may without the production of a medical certificate by written order direct that such person be received into an institution to be named in the order and be there detained under observation during such period, not exceeding fourteen days, as to the Magistrate may seem expedient...

Section 9

(1) Where, upon such enquiry as is provided for by this Act, it appears to the Magistrate that any person is of unsound mind and a proper subject for confinement, and such medical certificate as by this Act is required of his unsoundness of mind has been given, the Magistrate may adjudge such person to be of unsound mind and a proper subject for confinement, and may either proceed to make an order according to this Act for the care and custody of such person...

(2) In all cases when a person has been adjudged to be of unsound mind and a proper subject for confinement, he shall be handed over to the authorities of the mental hospital together with the medical certificates relating to his mental condition and the said authorities shall be responsible for his safe conduct to the hospital and his reception, detention and treatment at the hospital.

Section 10

(1) Where, under this Act, any person has been duly adjudged to be of unsound mind and a proper subject for confinement, any Magistrate may -...

(c) if it appears that the person of unsound mind is a patient with no visible means of support by warrant under his hand commit him to a mental hospital there to be taken charge of as a government-aided patient.

Section 32

(1) Where the Governor-General is satisfied that any person not being a moral defective, imprisoned for any cause in any prison is of unsound mind, or where it is represented to the Governor-General that any person so imprisoned appears to be of unsound mind the Governor-General, acting in his discretion, may, by warrant under his hand, direct that such person be removed to such hospital for criminals of unsound mind or other mental hospital as the Governor-General thinks proper, and that he be detained in such hospital until discharged as in this section is mentioned.

(2) Where any person is detained in any hospital under the provisions of this section, it shall be the duty of the person in charge, if and when he is satisfied that the person so detained is of sound mind, to certify accordingly to the Governor-General and to state in his certificate whether in his opinion the person so detained has been of unsound mind at any time subsequent to the passing of the sentence, and upon receipt of such certificate, the Governor-General, by warrant under his hand-

(a) if the term of imprisonment of the person so detained has expired, shall direct that such person be discharged;

(b) if the person so detained still remains liable to imprisonment or other sentence, may direct that he be removed to the appropriate prison or place to undergo such sentence, or, if not under sentence, to be dealt with according to law, as if no warrant for his removal to a hospital had been issued...

(3) The time during which any person under sentence of imprisonment is detained in any hospital for criminals of unsound mind or mental hospital shall be reckoned as served under such sentence.

Section 34

When the term of imprisonment to which a person confined in a hospital for criminals of unsound mind or other mental hospital is liable expires while such person is in custody in such hospital,

then unless the medical officer in charge of the said hospital by writing under his hand, certifies that such person may safely be allowed to be at large, such person shall, at the expiration of his term of imprisonment, be deemed to be a government-aided patient, and any Magistrate may order that such person be detained in a mental hospital as a government-aided patient.

Section 36

(1) The Governor-General acting in his discretion, may order the discharge, absolutely or conditionally, of any person confined in a hospital for criminals of unsound mind whether recovered or not:

Provided that where on such discharge, the Medical Superintendent certifies that such person cannot safely be allowed to be at large, then immediately upon the discharge, such person shall be deemed to be a government-aided patient and any Magistrate may order that such person be detained in a mental hospital as a government-aided patient.

(2) Where, upon the information upon oath of the senior police officer of any district, it appears to a Magistrate that a condition, subject to which a discharge under this section was granted, has been broken, such Magistrate may order the person discharged to be conveyed to the hospital from which he was discharged, and there to be detained as if he had not been discharged therefrom, and may issue his warrant accordingly.

35 These sections describe how on Antigua the authorities have the ability to confine persons with a dangerous mental health condition. Further the court notes the Act contemplates powers associated with the Governor put into legislation before independence in 1981 at a time the role of the Governor was very different.

a. Under **s5 MTA**, the Magistrate can if expedient, on receiving information Adams is 'of unsound mind and a proper subject for confinement', may order him to be received into Clarevue, requiring under **s4 MTA** review by two doctors, then under **s9 MTA** adjudicate him to be of unsound mind, requiring confinement as a government-aided patient under **s10 MTA**.

b. Under **s32 MTA**, noting the old language defining 'unsound mind', nowadays seeming medically redundant and inadequate, possibly even offensive, and assuming Adams would not be termed a 'moral defective', the Governor can order Adams to Clarevue, if sentenced

to prison and of unsound mind, where time at Clarevue would count as time in prison, to be returned to prison if later of sound mind, and released from either institution at the end of the sentence, unless under **s34 MTA** the medical officer in charge has not certified Adams safe for release, so that then Adams would remain detained as a 'government-aided patient', by implication under **s36 MTA** not to be released until certified safe.

- 36 What is significant is these provisions rest in the hands of the Governor and the Magistrate, not the High Court, which cannot order them into effect, though perhaps can encourage it.
- 37 What Dr. Benjamin urges is the High Court passes a determinate sentence, which by definition at some point comes to an end, apparently imminently, and thereafter the court should simply trust the mental health facilities on Antigua to deal as needed with Adams, using the **Mental Treatment Act**, if he fails to take his medication, to have the Magistrate detain him as a government-aided patient. As discussion proceeded on 30.04.21, this position seemed adopted by the others, being the Crown, defence, and probation service.
- 38 However, regrettably the court hesitates the system will automatically work as hoped. And the danger is Adams will simply be released into the community, without outpatient care set up under meaningful compulsion, stop his medication which he detests despite his sister's best efforts, and do serious harm again, before there is use of the Act. Such a scenario is precisely what this court wishes to prevent.

Constructing the likely sentence

- 39 Adams is mentally ill and remains a danger. Sentencing principles were helpfully captured by Benjamin J (as he then was) in *Richardson* supra, at para 61, quoting the then approach of the St Lucia criminal code, as follows:
1. The Court must obtain and take into account the expert medical reports and the presentence report;
 2. The offender must be dealt with in the manner the Court deems to be most appropriate in all the circumstances of the case;

3. Consideration must be given to the seriousness of the offence;
4. Any possibility of the need to protect the public from serious harm by the offender in cases of violent (or sexual) crime must be considered;
5. The rehabilitation of the offender is to be treated as a primary objective of sentencing;
6. In appropriate cases, the Court can consider a non-custodial sentence;
7. The Court must weigh the likely effect of a custodial sentence on the condition of the offender and on the treatment of the offender;
8. The seriousness of the punishment must be commensurate with the gravity of the offence; and
9. The Court can impose a term longer than is commensurate with the seriousness of the offence including an indeterminate term where the protection of the public from serious harm from the offender is in its opinion required provided that its opinion is so stated in open Court and explained to the offender in ordinary language.

40 The learned Judge continued, quoting from the UK case **R v Chambers 1983**⁸:

In diminished responsibility cases there are various courses open to a judge. His choice of the right course will depend on the state of the evidence and the material before him. If the psychiatric reports recommend and justify it, and there are no contrary indications, he will make a hospital order [*not available here*]. Where a hospital order is not recommended, or is not appropriate, and the defendant constitutes a danger to the public for an unpredictable period of time, the right sentence, will, in all probability, be one of life imprisonment [*not available here*]. ...In cases where the evidence indicates that the accused's responsibility for his acts was so grossly impaired that his degree of responsibility for them was minimal, then a lenient course will be open to the judge. Provided there is no danger of repetition of violence, it will usually be possible to make such an order as will give the accused his freedom possibly with some supervision. There will however be cases in which there is no proper basis for a hospital order; but in which the accused's degree of responsibility is not minimal. In such cases the judge should pass a determinate sentence of imprisonment [*all that is available here*], the length of which will depend on two factors: his assessment of the degree of the accused's responsibility and his view as to the period of time, if any, for which the accused will continue to be a danger to the public.

41 Reviewing the facts, as above the killing was horrendous, and there can be no doubt Adams intended to kill rather than cause really serious harm. Moreover, there are indicia of manipulative

⁸ R v Chambers (1983) 5 Cr. App. R. (s) 190.

and contradictory behavior, in pretending in the Lobster Pot not to know anything of what happened, next day summoning an attorney and then dismissing him, saying to police he recalled approaching a lady in rage, but to the Magistrate he thought he encountered a dog while also lying he had not had a knife. To the mind of the court, he is more culpable than others mentally ill. It is difficult to imagine a more serious case of diminished manslaughter. Accordingly, considering the offence circumstances, the starting point for the offence ought to be 34 years, which is almost the maximum. Considering his personal circumstances, being without previous convictions, having served well as a police officer, there can be a discount of one year, to 33 years. Considering his plea, it can be argued it ought to attract the full discount of one-third as being made at the earliest opportunity, namely on 22.02.21. However, the court notes, despite being fit to plead, and having then pleaded, he shows no remorse and continues to deny committing the offence to SPO Jarvis, so that unusually and uniquely in this case there is merited an adjustment in the plea discount, so that instead of reducing the sentence one-third, eleven years to 22 years, it ought instead be reduced three years to 30 years.

42 I turn now to time on remand. If Adams had been in jail, he would have been eligible for automatic remission of sentence if of good behavior on serving two-thirds, or 20 years. In theory, having been incarcerated for 24.3 years, if time confined in Clarevue counts as time on remand, then he would be eligible for release. However, in previous cases concerning time in Clarevue, it is clear the prison does not treat time in Clarevue as time on remand, and so in the cases of *Jarvis* and *Horsford*, supra, whose sentences were respectively calculated to be 16 and 12 years, they were adjusted to take time in Clarevue into account, which had been the vast majority of their incarceration, by when their calculated sentences could be deemed already completed, meaning in those cases the sentences passed were declared to be 'time served'.

43 In theory, the court could take a different approach to time in Clarevue in this case to those, as those concerned the Crown accepting pleas to manslaughter by reason of provocation, not diminished responsibility. In other words, in those cases the mental illness which had led to confinement to Clarevue had not been deemed the cause of the offending, unlike here.

44 However, under **s32(3) Mental Treatment Act** supra, it is to be noted that any term of imprisonment passed as a sentence on a person of unsound mind, then confined to Clarevue,

will be deemed being served in Clarevue as if in prison. By implication, the Act makes it grossly unfair to ignore time 'on remand' in Clarevue, when time 'serving' in Clarevue would count, so that had a sentence of 30 years been passed in 1997, and mostly spent in Clarevue, it would by now likely be deemed served.

45 The court has been told Adams was two years on remand in prison, which is the equivalent of a three years sentence, but which if expressed so, as three years for this killing, would be plainly insufficient.

46 It follows then the approach of the court will likely be in due course to pass a prison sentence on Adams, as with *Jarvis* and *Horsford*, of 'time served'.

47 However, the court will not pass this sentence today. Passing of the sentence will instead be adjourned one month to Friday 04.06.21. In that time, the authorities, being His Excellency the Governor-General Sir Rodney Williams, The Attorney General The Rt. Hon. Steadroy Benjamin, the Learned Chief Magistrate Joanne Walsh, the Medical Officer in charge of Clarevue Dr. James King, and the Police Commissioner Atlee Rodney, to be notified with a copy of these remarks please by the Registry and in parallel by the ODPP⁹, will have the time to put in place, if it is desired, in readiness for his sentence being likely declared served, a confinement order under the **Mental Treatment Act**.

- a. Such an order will mean that, although on 04.06.21 it may be expected the sentence of Adams will be deemed served, he may not be released from Clarevue, but instead might remain confined there as a 'government-aided patient', no longer before the High Court for a criminal offence, but not to be released until certified safe by the medical officer in charge.
- b. Alternatively, there may be no confinement sought, in the discretion of the authorities, and he might return home on 04.06.21 to his sister. Such a course will need to be discussed by all interested parties very carefully with Clarevue, perhaps with formal meetings, with Adams' family in attendance, contemplating expectation he will take his medication, identifying some measure of compulsion, perhaps with daily reporting to police and weekly reporting to

⁹ Office of the Director of Public Prosecutions.

Clarevue, residing with his sister Sharon, with undertaking by her she will make every effort he will remain medicated, reporting him if not, and failing medication the **Mental Treatment Act** may then be deployed to confine him.

- c. In this way, whether seeking confinement or outpatient care, neither of which is in the control of the High Court, and neither of which is in process yet, the authorities will be ready for the likely end of Adams' sentence, up to when during this adjournment he is to remain at Clarevue.

48 In short, on 04.06.21, it will likely be said the sentence should have been 30 years, then declared 'time served', but if empowered should have been a restriction order; in the interim I direct in so far as I can the authorities consider whether, in readiness, to deploy the **Mental Treatment Act** possibly to delay the release from Clarevue of Wilson Adams after his sentence may be pronounced and deemed served.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

4 May 2021