

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
NEVIS CIRCUIT**

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

Claim Number: **NEVHCR2019/0005**

Between

Director of Public Prosecution

-and-

Alston Phillip

Before: His Lordship Justice Ermin Moise

Appearances:

Mr. Teshawn Vasquez of counsel for the crown

Mr. Brian Barnes of counsel for the Defendant

Defendant present

2021: May, 27th

Judgment on Sentencing

1. On 19th November, 2020, the defendant, Mr. Alston Phillips, was found guilty of the murder of Lydia Jacobs and was also convicted of the attempted murder of Erica Williams and Mishkin Brookes. A pre-sentence report from the Department of Social Services was ordered and was submitted to the court on 11th May, 2021. Counsel for the Prosecution and Defence have also filed submissions on sentencing and a plea in mitigation respectively. Having considered these, insofar as it relates to the murder of Lydia Jacobs, I have determined that the defendant should be sentenced to life in prison with a review of his sentence after 35 years. On the two counts of attempted murder, I have determined that the defendant should serve a sentence of 6 years and 6 months on each offence. These are to run concurrently. My reasons are as follows.

The Facts

2. On the evening of 2nd June, 2017 at approximately 10:45 – 11:00pm Lydia Jacobs was shot and killed by a masked gunman whilst entering her yard in Church Ground, Nevis. At the time of her death she was 37 years old and was the mother of 4 young children.

3. The evidence is that Ms. Jacobs was an employee of the 4 Seasons Hotel. After completion of her shift on that evening she was given a ride home by her friend Erica Williams and Erica's boyfriend Mishkin Brookes. As they got to Lydia's House, after a conversation in the car, she got out of the vehicle and proceeded to enter into her yard. It was at that point that a masked individual dressed in black emerged from the bushes. Mishkin Brookes and Erica Williams both stated that they heard what sounded like firecrackers. Lydia's daughter Kishonia Jacobs, then aged 14, was at home that night, along with her younger siblings. She too, states that she heard what sounded like gunshots. She ran from a room and looked through the living room window, only to observe her mother laying on the ground in the yard.
4. Whilst running out of the yard, the gunman then fired at the car in which Erica Williams and Mishkin Brookes were seated. He eventually fled the scene.
5. Despite having been shot at, the task fell on Mishkin Brookes and his girlfriend Erica to rush Lydia to the hospital. The evidence is that she was bleeding from her neck. In addition to that, Kishonia Jacobs, who was the oldest sibling on the scene at the time, had to take her younger siblings with her to the hospital, where her mother was later pronounced dead.
6. The post mortem report revealed that Lydia was shot 3 times. One bullet to the neck, another to her torso and one to her head. The pathologist opined that the injury to her head damaged her brain and this was fatal. There was no way she could have survived this particular injury. However, even if that had not been the case, the injury to her torso would have resulted in damage to her spine, to the extent that she would have been paralyzed from the waist down.
7. Kishonia identified the defendant, Alton Phillips as the one she observed on that night. She stated in evidence that she observed him in the bushes. She knew him as Mark as he was known to the family. He was married to Lydia's friend Cassandra and the two had visited Lydia's home on occasion. She was certain that it was Mr. Phillips that she observed on that night. It can safely be said that the jury accepted her evidence.
8. The evidence is that Mr. Phillips and his wife Cassandra had been experiencing some strain in their marriage and that Cassandra had confided in Lydia. This apparently raised some tension between Lydia and Mr. Phillips, who expressed the view that she was interfering in his marriage. Prior to her

murder, Lydia had made reports to the police of threats which Mr. Phillips had made to kill her. These included whatsapp messages of a threatening nature and direct threats made during an argument at the Charlestown Pier on 7th May, 2017. It is my understanding that at the time of her murder there was an ongoing case of threatening words before the Magistrate.

The Pre-Sentence Report

9. Mr. Phillips was interviewed by a social worker and it was revealed that he was born in Jamaica on 28th April, 1974. At this time of sentencing, he is 47 years old. He moved to Nevis in 2010 for work purposes. He has fathered 3 children, two of whom are adults and the last is 8 years old. From his two older children he is now a grandfather of 3. He states that his children and grandchildren have visited him in Nevis and that he maintained a close relationship with them as well as his own siblings and parents in Jamaica, where he was raised in what he described as a Christian home.
10. Interviews with his siblings and parents reveal that they hold him in some regard and suggest that an offence of this nature was out of character for him. He seemed to have enjoyed a stable life in Jamaica with no history of violence from that jurisdiction presented to the court. He attended primary and secondary school and qualified as a chef at a culinary school in Jamaica. At the time of the offence he was the proprietor of a catering business called Catering Services in Nevis.
11. Mr. Phillips informed the social worker that he attended the Eden Browne Church in Gingerland, Nevis. He states that he was baptized in 2013 and had remained faithful to his church. He attended church every Sunday and was a member of the Men's Fellowship where he also used his cooking skills for the benefit of various church functions. The report also contained a statement from his pastor who spoke in positive terms of Mr. Phillips. The pastor however acknowledged the tensions which existed between himself, his wife and Lydia Jacobs. Apparently they all attended the same church and one point.
12. Mr. Phillips however has one previous conviction by a Magistrate for the offence of battery. There is also some history of domestic dispute between himself and his wife, in which they have both accused each other of threats. These are however, not fully described and the court will not entirely weigh this against him in the sentencing phase of these proceedings; except to say that his wife,

Cassandra gives a different picture of Mr. Phillips' character than his family members from Jamaica who gave information to the social worker.

13. As it relates to the offence, Mr. Phillips has continued to maintain his innocence, even after conviction. Though expressing sorrow for what happened to her, he denies being responsible for Lydia's death.

Victim Impact

14. There can be no doubting the significant impact the death of a mother would have on her children. Ms. Jacobs was only 37 years old when she was gunned down in this way. Her daughter Kishonia, witnessed the immediate aftermath of the murder and recounts the experience of that day in her victim impact statement. She described herself as being frightened and not knowing what to do. She observed Mr. Phillips in the bushes even after noticing her mother on the ground in a pool of blood. This incident, according to Kishonia, took place two weeks before she was due to sit her CXC examinations and one month before her 15th birthday.
15. Although she went on to do rather well in the exams, she states that her personal goals and dreams have not materialized due to her mother's death. She had to live with relatives in Saint Kitts after this incident and did not find the experience of doing so to be very comforting. She abandoned her dreams of attending the Christian University in Texas. She states that her hopes had "gone down the drain." She is now a mother herself and laments the fact that she didn't get the motherly love she wanted, despite having to care for a child of her own.
16. Kishonia states that this ordeal affected her to the point where she could not sleep and felt the constant need to look over her shoulders in fright. She has suffered asthma attacks, one of which took place in court during the trial while she was giving evidence.
17. She described her mother as a loving person who cared for her children. Kishonia coped with the death by listening to music and going through family photos. However, she observed that her younger siblings never went on to do well at school after the incident and that they had fallen through the cracks.

18. A statement was also presented from Ms. Cassandra Budgeon, who was Mr. Phillips' wife at the time of the incident. She described her relationship with Lydia Jacobs and the shock she felt as a result of her murder. She indicates that she migrated from the jurisdiction after the ordeal as even her own child was being teased at school where children accused his father of being a murderer. She has felt guilt and helplessness as a result of Lydia's death.

Sentencing Guidelines

19. The crown in this case has not argued for the imposition of the death penalty and neither counsel expressed a desire to cross examine on anything contained in the pre-sentence report and the victim impact statements. The crown has sought a sentence of life imprisonment for the murder of Lydia Jacobs and a sentence of five and a half years for the attempted murder convictions. On the other hand, counsel for the defendant argued that a determinate sentence within the range of 30 to 50 years is reasonable in the circumstances for the offence of murder and takes no issue with the request for a 5 ½ year sentence on the attempted murder charges.
20. The starting point therefore, is to determine whether a whole life sentence is appropriate and in keeping with the sentencing guidelines. Section 4 of the guidelines state as follows:

4. The appropriate starting point is a whole life sentence if:

a. the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high; and

b. the offender was aged 18 or over when he committed the offence.

21. Section 5 of the guidelines goes on to highlight a number of factors which may be considered in determining whether the seriousness of the offence is exceptionally high. These include;

- (a) a substantial degree of premeditation and planning; and
- (b) whether the murder was part of a series of criminal acts

22. In this case, there is evidence of pre-meditation of the murder. Evidence was presented of the defendant previously threatening to kill Ms. Jacobs. The defendant was at the scene on that night with a mask. He was present on Ms. Jacobs' property with a gun and the evidence suggests that he would have waited for Ms. Jacobs to return home from work in order to carry out this offence.
23. In addition to this, the defendant is also convicted for the attempted murder of Mishkin Brookes and Erica Williams. These convictions all arise from the same incident. Counsel for the defendant asked that the court finds these attempted murder offences were not premeditated and therefore ought to work in favour of a reduction in the sentence. I will consider this submission more closely in determining the sentence for attempted murder. However as it relates to sections 4 and 5 of the guidelines, I find the facts to be sufficient to state that a whole life sentence ought to be considered. The question is whether there is anything to be said about the mitigating factors, when balanced against the aggravating circumstances, which may persuade the court to reduce this from a whole life sentence to one for a determinate period.
24. Insofar as the mitigating factors are concerned these may be placed into two categories. The first category contains those factors which are peculiar to the defendant. The second is to assess whether there are any mitigating factors which are associated with the crime for which he has been convicted. I find that there are no mitigating factors related to the murder of Lydia Jacobs.
25. As it relates to Mr. Phillip's personal circumstances I consider that although the defendant has one previous conviction for battery, he had otherwise been deemed to be a loving member of his family circle; at least those who spoke up for him from his family in Jamaica. I say so with the one caveat that his wife at the time of the offence had appeared at trial and gave a different view of Mr. Phillips' personality. Mr. Phillips attended church regularly and his pastor has spoken in generally good terms about him. I take into account his skills as a chef and combined with the other factors referred to, I find that he is a good candidate for rehabilitation.
26. I consider the aggravating factors relating to the offence to be as follows:
- (a) Mr. Phillips knew his victim. He along with his wife had enjoyed a friendship with Ms. Jacobs and her family and the Pastor suggested that they all attended the same church at some point.

He therefore knew that to murder her in this way, in her own yard, would have had an impact on her children who were very young at the time.

- (b) This was also a pre-meditated murder, which carried out threats which Mr. Phillips had made earlier;
- (c) The use of a firearm adds to the aggravation in the manner in which this offence was committed.
- (d) The fact that Mr. Phillips also shot at Mishkin Brookes and his girlfriend Erica Williams after murdering Lydia Jacobs is yet an additional aggravating factor.

27. As it relates to the aggravating factors related to the offender, I consider that Mr. Phillips has a previous conviction for battery. Though this is a summary offence, it nonetheless is an offence which shows a propensity to some measure of violence on Mr. Phillips' part.

28. Taking these circumstances into account I am of the view that the aggravating factors by far outweigh the mitigating factors in this case. The principles of deterrence and prevention outweigh the prospects of rehabilitation. A whole life sentence is therefore appropriate in the circumstances of this case.

29. In accordance with the decision of the CCJ in the case of **Renaldo Alleyne v. The Queen**¹¹ I go on to consider a minimum term which Mr. Phillips should serve before being considered for release. In that case the court concluded that:

- (a) The principles of rehabilitation, retribution, deterrence and prevention all remain relevant in coming to an appropriate sentence, including cases where a life sentence may be imposed;
- (b) That the principles of deterrence and prevention may be overriding in the peculiar facts of the case so as to warrant the imposition of a life sentence, regardless of the defendant's prospects of rehabilitation;

¹¹ [2019] CCJ 06

(c) However, a whole life sentence does not mean that the convict should literally spend the rest of his natural life in prison.

30. I consider that despite the silence of the guidelines on that issue the court is still empowered to consider whether a defendant sentenced to life in prison may be properly rehabilitated so as to be returned to society at some point in the future. As such, a sentencing judge should recommend a tariff or a minimum period of incarceration to be served for the purpose of prevention and deterrence.

31. There is no provision in the laws of Saint Christopher and Nevis for the parole of individuals serving prison sentences. I therefore refer to the decision of **Renaldo Alleyne v. The Queen** where it states that in such circumstances a defendant who has been sentenced to prison for life should have his sentence reviewed by the court after a reasonable period to determine whether he had been properly rehabilitated and fit to return to society.

32. The authorities do not provide much guidance on how the tariff is to be set. In the recent sentencing in the case of **Reece Walters**² in this jurisdiction, the court set a tariff of 30 years. That case involved a younger defendant with no previous convictions in circumstances where the main aggravating factor was the presence of a sexual element to the crime and the age of the victim. There was no evidence of premeditation. In the present case, the crime was premeditated and one of revenge for what Mr. Phillips considered to be interference in his marriage. I find that overall, although he is a candidate for rehabilitation, the nature of the offence and the aggravating factors show that retribution, prevention and deterrence are to be weighed more heavily against him. I find that a minimum period of 35 years ought to be served before Mr. Phillips' sentence can be reviewed.

Attempted Murder

33. The aggravating and mitigating factors which related to the offences of attempted murder are substantively the same as has already been considered above. However, counsel for both sides

² NEVHCR2017/0003

had generally agreed on one issue which the court expresses some concern with. That is, the issue of pre-meditation.

34. Both Mr. Barnes and Mr. Vasquez have expressed the view that a lack of premeditation stands as a mitigating factor in the attempted murder of Erica Williams and Mishkin Brookes. However I rather doubt that the court ought to weigh this in favour of the defendant in a bid to reduce the sentence to be imposed on him. Consider for a moment a man premeditates a murder and takes all preliminary steps to carry out his plan. He lies in wait with a gun only to find that the object of his anger is not alone, but walks down the street with two friends in his company. That may very well be an opportunity for him to reconsider his intention. Nonetheless, the assailant carries out his plan anyway, then turns around and also murders the two friends who are potential witnesses to the crime. I think the average man on the streets in Charlestown, Nevis would be shocked to know that the court would find that a spur of the moment decision to execute a witness to a premeditated murder, would be a factor to be weighed in the defendant's favour. An attempted murder in such circumstances ought not to be treated any differently.
35. For the defendant to have executed Lydia Jacobs in this way and then turn around to shoot at those who were kind enough to give her a ride home, doesn't come across to me as a circumstance which stands as a mitigating factor in this case. If anything I find it to be particularly aggravating for people's lives to have been placed at risk in this way for no other reason than to perpetuate such a heinous crime. What was premeditated was murder and a callous disregard for innocent people in the execution of the plan does not warrant a reduction in the sentence for attempted murder. I would decline the invitation to view the circumstances of this case in that way.

Guidelines

36. Although there are no specific sentencing guidelines for attempted murder, counsel for the crown referred the court to the compendium for the practice direction for violent offences. I will adopt that approach and would place these offences of attempted murder in category 3 of that compendium as no physical harm was caused to Mishkin Brookes and Erica Williams. I would however, place the offences in Level A, given the use of a firearm and the fact that the attempted murder conviction can only be on the premise that there was an intention to cause more serious harm than

what actually occurred. The starting point is therefore a sentence of approximately 45% of the maximum with an arrangement of between 30% to 60%.

37. In this case, the maximum sentence imposed by the law is 10 years. Despite the median of 45% I am of the view that this being an attempted murder case, the percentage in the reduction from the maximum ought to be higher. I would initially impose a sentence of 55% therefore amounting to 5 years and 6 months. I then consider the aggravating factors, some of which have been highlighted above. There was a firearm used in committing this offence. There were two people in the vehicle at the time. There were also persons, including young children in the house. Further to that, given that the defendant had in that very moment shot and killed Lydia Jacobs, the attempted murder of Mishkin Brooks and Erica Williams can be said to have been motivated by a desire to execute witnesses to a premeditated murder. I find these factors to be rather aggravating.
38. There are no mitigating circumstances to this offence, save that no one was actually hurt in the end. As I have said earlier, I do not find the lack of pre-meditation to be a factor in this case as there was a clear intention to commit a heinous crime, albeit against someone else. I would therefore increase the sentence to a term of imprisonment for 6 years and 6 months of each of the charges of attempted murder.

Orders on Sentencing

39. The order of the court is therefore as follows:

- (a) for the murder of Lydia Jacobs, the defendant is sentenced to prison for the rest of his life;
- (b) That the defendant must serve a minimum of 35 years before a review of his sentence is to be conducted by the court to determine whether he is sufficiently rehabilitated for reintegration into society. If the legislature of Saint Christopher and Nevis has subsequently made adequate provision for the establishment of a parole board or similar institution, the defendant's sentence may be reviewed in accordance with those provisions;
- (c) That the defendant will serve terms of imprisonment of 6 years and 6 months each for the attempted murder of Erica Williams and Mishkin Brookes.

- (d) All prison sentences are to run concurrently;
- (e) Time spent on remand will count towards the sentences imposed.

**Ermin Moise
High Court Judge**

By the Court

Registrar