

**THE EASTERN CARIBBEAN SUPREME COURT**  
**IN THE COURT OF APPEAL**

**GRENADA**

**GDAHCRAP2013/0004**

**BETWEEN:**

**STEVE GURRIE**

Appellant

and

**THE QUEEN**

Respondent

**Before:**

The Hon. Mr. Davidson Kelvin Baptiste

Justice of Appeal

The Hon. Mde. Gertel Thom

Justice of Appeal

The Hon. Mr. Paul Webster

Justice of Appeal [Ag.]

**Appearances:**

Mr. Ruggles Ferguson and Ms. Danyish Harford for the Appellant

Mr. Christopher Nelson, QC for the Respondent

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2022: April 5;

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*Criminal appeal — Murder — Appeal against sentence — Psychiatric evidence — Disease of the mind — Whether sentence was manifestly excessive or wrong in principle in the circumstances — Early guilty plea — Whether judge failed to take into account medical reports — Whether judge failed to give sufficient weight to the social inquiry report — Whether judge failed to balance the mitigating and aggravating factors — Whether judge failed to give sufficient weight to the behaviour of the appellant — Sentencing remarks — Circumstances in which appellate court will interfere with sentence given by trial judge*

**REASONS FOR DECISION**

[1] **BAPTISTE JA:** It was the 3<sup>rd</sup> of May 2010. In an indubitably gory scene, Steve Gurrie (“Gurrie”) upturned a bucket containing the heads of two men on the counter

of a police station. Earlier that day, Gurrie had beheaded Christopher Stafford and Clyde Greenidge at the latter's farm in Balthazar, St. Andrew's, Grenada. He placed their heads in a bucket, drove to the Grenville police station in Greenidge's van, walked up to the counter, lifted the bucket and poured out the contents onto the counter, calmly saying 'ah jus kill two man there'. His actions necessarily engaged questions as to his psychiatric health. The following day he was taken to the Mount Gay Mental Hospital and examined by Dr. Esperanza Swaby, a psychiatrist. The diagnosis was an 'impression of paranoid schizophrenia'.

- [2] Gurrie was arrested and charged with two counts of murder on 5<sup>th</sup> May 2010. He pled guilty to both counts on 9<sup>th</sup> October 2013. Price-Findlay J noted that the court had satisfied itself that Gurrie understood the nature of his plea and had the benefit of legal advice prior to its entry. The learned judge imposed a sentence of 35 years imprisonment to run from the date of remand. The conditions attached were that Gurrie was to be examined by a psychiatrist every six months for the purposes of determining his psychiatric health, with any recommendation for further treatment. Should the psychiatric evaluations be favourable, that the sentence be reviewed after a period of twenty-five years with a view to early release.
- [3] Gurrie appealed the sentence on the several grounds embraced in the notice of appeal dated 18<sup>th</sup> December 2013. The pith and substance of the appeal concerned the judge's treatment of the psychiatric evidence in relation to the sentence imposed. His counsel, Mr. Ruggles Ferguson, contended, among other things, that the sentence was manifestly excessive, particularly having regard to the psychiatric reports, the behaviour of Gurrie at the time of the commission of the murders, and the mitigating factors. Learned counsel also raised issues with respect to the weight the learned judge ascribed to various factors in the sentencing exercise and submitted that the sentence amounted to life imprisonment, was retributive in nature and Gurrie was sentenced as if he were a normal person. Mr. Christopher Nelson QC, the learned Director of Public Prosecutions, propped in favour of the rectitude of the sentence and submitted that it was appropriate given all the circumstances.

- [4] For the reasons articulated hereunder, this Court unanimously dismissed the appeal. This, being an appeal against sentence it would be instructive to state the remit of the appellate court. Appeals against sentencing to the Court of Appeal are not conducted as exercises in re-hearing *ab initio*. It is not the function of this Court on an appeal against sentence, to conduct a sentencing hearing. On appeal, a sentence is examined to see whether there was an error in law or in principle or whether it was manifestly excessive, and those questions are determined according to the law and practice obtaining at the time the sentence was passed by the judge. As Lord Burnett CJ said in **R v Chin–Charles; R v Cullen**<sup>1</sup>:

“The task of the Court of Appeal is not to review the reasons of the sentencing judge as the Administrative Court would a public law decision. Its task is to determine whether the sentence imposed was manifestly excessive or wrong in principle. Arguments advanced on behalf of appellants that this or that point was not mentioned in sentencing remarks, with an invitation to infer that the judge ignored it, rarely prosper. Judges take into account all that has been placed before them and advanced in open court and in many instances, have presided over a trial. The Court of Appeal is well aware of that.”

- [5] As Lewison LJ recognised in **Fage UK Limited and another v Chobani UK Limited and another**<sup>2</sup> at paragraph 114 “... in making his decision the trial judge will have regard to the whole of the sea of the evidence presented to him, whereas an appellate court will only be island hopping.” These words, although said in the context of an appeal against factual findings in a civil case, are also apt to an appeal against sentence.

- [6] The mere fact that a trial judge has not expressly mentioned some piece of evidence does not lead to the conclusion that he overlooked it. Thus, in **Henderson v Foxworth Investments Ltd**<sup>3</sup> the court stated: “an appellate court is bound, unless there is compelling reason to the contrary to assume that the trial judge has taken the whole of the evidence into his consideration.” At paragraph 57 the court further stated that:

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<sup>1</sup> [2019] 1 WLR 5921; [2019] EWCA Crim 1140 at paragraph 8.

<sup>2</sup> [2014] EWCA Civ 5.

<sup>3</sup> [2014] UKSC 41 at paragraph 48.

“The trial judge must consider all the material evidence although it need not all be discussed in his judgment. The weight which he attaches to it is pre-eminently a matter for him, subject to the requirement that his findings be such as might reasonably be made.”<sup>4</sup>

[7] An appellate court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract.<sup>5</sup> There is no reason why this approach should not apply to the sentencing remarks of a judge.

[8] I now turn to the grounds of appeal. Seven grounds are advanced. They are that:

1. The sentence of 35 years imprisonment is excessive in all the circumstances.
2. The judge failed to properly take into account the three medical reports which all concluded that the appellant was suffering from abnormality/disease of the mind while the offence was committed.
3. The judge failed to give sufficient weight to the social inquiry report which confirms that the appellant was a respectable, hardworking, decent, disciplined and well-liked person in the community.
4. The learned judge failed to give sufficient weight to the affidavits sworn by a wide cross-section of the community in support of the appellant's mitigation.
5. The learned judge failed to give sufficient weight to the behaviour of the appellant immediately after the commission of the offences and the arrival at the police station where he deposited the heads of the deceased - behaviour all consistent with the theory that the appellant was suffering from an abnormality/disease of the mind.

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<sup>4</sup> Ibid at paragraph 57.

<sup>5</sup> Per Lewison LJ in *Volpi & Anor v Volpi* [2022] EWCA Civ 464 at paragraph 2.

6. The learned judge failed to properly balance the mitigating and aggravating factors.
7. The learned judge disproportionately focused on the prevention and retributive aspects of sentencing, thereby failing to take into account the appellant's diminished mental state at the time of the commission of the offence.

[9] The sentence imposed is effectively one of life imprisonment.

[10] Gurrie's mental state when the crimes were committed assumed much moment in Mr. Ferguson's submissions and essentially lies at the heart of the appeal. The grounds of appeal encapsulating the issue of the appellant's psychiatric condition reside in grounds 2, 5 and 7. They relate respectively to the judge's alleged failure to properly take into account the three medical reports pertaining to Gurrie's psychiatric health at the time of the commission of the murders; his behaviour immediately thereafter and upon arrival at the police station - this ground rests on insufficiency of weight attached by the learned judge; and the weight the learned judge attributed to the preventive and deterrent aspects of sentencing at the expense of Gurrie's diminished mental state.

[11] An examination of these grounds (2,5 and 7) commences with some general observations with respect to sentencing of persons with mental health conditions and disorders and the relevance of those conditions to sentencing. The appropriate time to consider mental illness was the time that the offence was committed as this is the time which relates to the culpability of the offender in relation to the offences for which he falls to be sentenced.<sup>6</sup>

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<sup>6</sup> R v Rezazadeh [2020] EWCA 607 at paragraph 14.

- [12] The court noted in **R v PS and another**<sup>7</sup> that mental health conditions or disorders may be relevant to sentencing in a number of ways, for instance, to the decision about the type of sentence imposed. Where a custodial sentence is necessary, mental health conditions may be relevant to the length of sentence. The court must have regard to any personal mitigation to which the prisoner's mental health is relevant.
- [13] Sentencing an offender who suffers from a mental health condition or disorder necessarily requires a close focus on the mental health of the individual offender, at the time of the offence was committed as well as on the facts and circumstances of the specific offence. In some cases, his mental health may not materially have reduced his culpability; in others his culpability may have been significantly reduced. In some cases, he may be as capable as most other offenders of coping with the type of sentence which the court finds appropriate; in others his mental health may mean that the impact of the sentence on him is far greater than it would be on most other offenders. It follows that in some cases the fact that the offender suffers from a mental health condition or disorder may have little or no effect on the sentencing outcome. In other cases, it may have a substantial impact.<sup>8</sup>
- [14] At the sentence hearing, Price-Findlay J noted that there were two psychiatric reports submitted on Gurrie's behalf and one from the prosecution; and that it was clear from those reports that he was suffering from paranoid schizophrenia. Dr. Swaby, a consultant psychiatrist, conducted the first examination the day after the crimes and noted an impression of paranoid schizophrenia. In her report dated 10<sup>th</sup> May 2010, Dr. Swaby reported that Gurrie had delusional thoughts related to homosexual ideas and hearing voices commenting that he was homosexual - a 'battie man'. The voices had become more persistent, and his feeling of unpleasantness occurred to the point where he started drinking alcohol so that he could no longer hear these voices.

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<sup>7</sup> [2019] EWCA Crim 2286.

<sup>8</sup> Ibid at paragraphs 17 and 18.

- [15] On the day of the crime, Gurrie felt that the two deceased men were laughing at him, so he became angry and attacked them, cutting off their heads with a cutlass. The idea to do so came to him suddenly. At the time he felt he had done nothing wrong, that he had to kill the two men and there was another one he had to kill but he was not there at the moment. Gurrie showed no remorse as he related what happened and did not know why he was incarcerated.
- [16] Dr. Keith J.B Rix, a consultant forensic psychiatrist of 30 years' experience examined Gurrie on 8<sup>th</sup> July 2010 and gave his report on 29<sup>th</sup> August 2010. The learned judge found that Dr. Rix gave a very detailed report of his examination. He opined that Gurrie was suffering from a mental illness, probably 'schizophrenia or a schizophrenia like illness'. Although at the time of the examination he showed no active evidence of mental illness, Dr. Rix opined that at the time of the commission of the offence, it was more probable than not that Gurrie was psychotic. Dr. Rix however found that he was aware of the nature and quality of his acts and 'he knew he was killing them'. He found that Gurrie had an aberration of mind, there was some form of mental unsoundness or mental disease. He was suffering from a defect of reasoning due to a disease of the mind.
- [17] Dr. Harry Wood, a clinical and forensic psychologist, conducted a psychological interview with Gurrie on 26<sup>th</sup> October 2011. He found that Gurrie was in a state of extreme confusion and was likely to have been suffering from an altered state of mind at the time of the incident, further, his responses indicated the presence of a psychotic illness, like schizophrenia.
- [18] Mr. Ferguson contended that Price-Findlay J failed to pay due regard to the evidence of the experts, for if she had done so, it would have been clear that these were not killings by a normal human being, but by someone who was operating under a mental impairment or defect of reasoning due to a disease of the mind. Learned counsel argued that apart from repeating certain aspects of the reports of the three experts, the learned judge failed to give any indication of how she took the

appellants mental state into account and applied it in sentencing. She mentioned it neither in the list of mitigating factors or otherwise.

[19] Mr. Ferguson posited that contrary to the judge's bald assertion, the evidence showed conclusively that she treated Gurrie as a normal person during the sentencing exercise. Counsel submitted that the learned judge fell into serious error by simply giving lip service to his mental state and proceeded to sentence on the basis that he was a normal person. Further, she failed to objectively analyse the factors that influenced the appellant's conduct and to determine whether or not and to what degree his state of mind should impact on his sentence.

[20] The criticisms levied against Price-Findlay J's treatment of the psychiatric evidence and its impact on sentencing, cannot be sustained. The learned judge examined and took into account the psychiatrists' reports and that of the psychologist, and expressly stated that she took into account factors that may have influenced Gurrie's conduct; and that his mental condition clearly had an effect on his behaviour on the day in question. Further, the learned judge expressly stated that she must take into account his mental state at the time of the commission of the killings and took into account his mental state in coming to a determination of what an appropriate sentence would be in this matter.

[21] The learned judge's remark that she took Gurrie's psychiatric condition into account is perfectly adequate. I respectfully endorse the statement of Green LJ in **R v Bailey and others**<sup>9</sup> at paragraph 34 that:

"sentencing remarks are not intended to amount to a test of drafting; they are intended to be succinct explanations of the facts and matters that have affected the judge's judgment as to the sentence to be imposed. ... Were it otherwise, appeals would be brought against perfectly proper sentences upon the basis of bad drafting or poor expression."

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<sup>9</sup> [2020] EWCA Crim 1719.

- [22] In **Bailey**, it was argued that the judge should have spelled out with some degree of clarity how she had applied the stages that the Totality Guideline identifies. In addressing that complaint, the Court of Appeal stated that there was no obligation on sentencing judges to set out in their remarks how they have applied the Totality Guideline. What mattered was the substance of the final sentence and whether it was just and appropriate. Whether a judge had applied totality is a question of substance and not form. The fact therefore that the judge made a single generalised statement towards the end of her sentencing remark to the effect that she had considered totality is perfectly adequate.
- [23] The fact that Price-Findlay J took the psychiatric evidence into account is reflected not only in her expressed statement but also in her requiring that a psychiatrist examines him every six months for the purposes of determining his psychiatric health, with any recommendation for further treatment and should the psychiatric evaluations be favourable, that the sentence be reviewed after a period of twenty-five years with a view to early release.
- [24] As indicated, Mr. Ferguson also challenged the weight the learned judge attached to Gurrie's behaviour immediately after the commission of the murders. It is clear, however, that that behaviour is bound up with the psychiatric findings which the judge would have fully considered. It must also be pointed out that weight is a contextual evaluation for the judge who reads, hears and sees the evidence of the witness. It is inappropriate for this Court to interfere with that evaluation unless it is perverse.<sup>10</sup> Weight is a matter of judgment, and the sentencing judge is particularly well-placed to assess the weight to be given to various competing considerations in the sentencing exercise. An appellate court should not lightly revisit the judge's attribution of weight. In this case, there is no basis for appellate interference.
- [25] Grounds 3,4, 6 and 8 will be conjointly considered. These grounds deal respectively with the sufficiency of weight the learned judge ascribed to the Social Inquiry Report;

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<sup>10</sup> *Manzi v Kings College Hospital NHS Foundation Trust* [2018] EWCA Civ 1882 at paragraph 23.

the alleged failure of the judge to properly balance the mitigating and aggravating factors; the complaint that the learned judge disproportionately focused on prevention and retribution at the expense of the appellant's diminished mental state, and that the sentence imposed is effectively one of life imprisonment.

[26] Mr. Ferguson asserted that the serious aggravating features are all tempered by the mental impairment of the appellant which the learned judge ought to have taken into account at the time of sentencing. Learned counsel also argued that the judge established no connection between the aggravating factors and the defect of reason due to disease of the mind. Learned counsel submitted that the appellant should be sentenced in keeping with a conviction for manslaughter. The judge ought not to have embarked on sentencing the appellant as an offender in his right state of mind.

[27] Mr. Ferguson argued that the appellant's mental state was only mentioned in passing by the learned judge and not afforded the rightful weight as a mitigating factor. Counsel submitted that had the appellant's mental state been duly considered and given appropriate weight, the learned judge would not have imposed the sentence that she did. The sentence imposed would have been applicable to the sentencing of a convicted person without abnormality of mind.

[28] Learned counsel complained that the appellant's guilty plea was only given passing reference and the discount afforded was not stated. Counsel submitted that combined with his good character, the early guilty plea, deep remorse, and all the positive attributes reflected in the independent Social Inquiry Report, ought to have earned him a significantly reduced sentence.

[29] The Director of Public Prosecutions, Mr. Nelson, QC, accepted that Gurrie's mental state was a mitigating factor, but submitted that it could not be relied on to pass a manslaughter sentence as opposed to one for murder. Mr. Nelson correctly pointed out that the laws of Grenada do not recognise the statutory defence of diminished

responsibility and therefore it is not available to accused persons. However, he pointed out that the judge stated that she took into account the mental state of the convict in determining the appropriate sentence. Mr. Nelson posited that the sentence was within the range of appropriate sentence for a crime of this magnitude. Further, the sentence is effectively 25 years, for an extreme and brutal case by an individual who had no prior history of psychiatric issues. Had it gone to trial, Gurrie would be looking at possibly life in prison.

[30] Mr. Nelson further submitted that implicit in the sentence is that the learned judge took into account all the mitigating factors. She ordered that he be examined by a psychiatrist every six months and that his sentence was to be reviewed after 25 years with a view to early release. This showed that the learned judge was keenly aware of the mental issues and would have taken them into account. The crafting of the sentence showed that. The sentence recognised that Gurrie had psychiatric issues.

[31] I have considered the submissions of the parties. Price-Findlay J had before her Gurrie's guilty plea, confession, co-operation with police, good character, and the Social Inquiry Report revealing positive response from the community. The learned judge identified the mitigating factors as including that Gurrie had expressed remorse, did not conceal culpability, fully co-operated with police, his guilty plea (albeit coming late in the day) and his mental state at the time of the commission of the crime. The judge stated that the aggravating factors included the nature of injuries, use of a cutlass, the depositing of the heads on the counter of the police station, the murders were totally unprovoked, and it was a multiple homicide.

[32] Price-Findlay J considered the character and record of the offender as borne out in the affidavit evidence and the Social Inquiry Report. The judge highlighted that Gurrie was described as a loving, kind and quiet and caring individual and helpful and had no difficulty in living in the community. The Social Inquiry Report described him as peaceful, loving generous, hardworking. The design and manner of

execution of the crimes, remorse, gravity of the offence, and possibility of reform and social re-adaptation were also considered by the judge.

- [33] The good character and record of the appellant led Price-Findlay J to conclude that there was nothing indicating a need to deter and prevent, nor did she find that he was incapable of rehabilitation. From the evidence gathered in the Social Inquiry Report, the possibility of re-adaptation was good. The appellant apologised at the sentencing hearing and a letter was read by his counsel indicating his remorse.
- [34] Price-Findlay J judge looked at the sentencing principles of retribution, deterrence, prevention and rehabilitation, as set out in **R v Sergeant**<sup>11</sup>. She found that there was no evidence of a need to deter Gurrie, in the sense that he seems to have been a peaceful and loving person within the community and the acts he committed appear to be an aberration. There is no need for prevention in this case and there was nothing to suggest that Gurrie was incapable of rehabilitation.
- [35] The learned judge found that there was a need for general deterrence taking into account the proliferation of knife, cutlass and machete crimes in Grenada and a message must be sent to society that this type of behaviour will not be tolerated. Price-Findlay J considered that the crime was heinous and brutal. She stated that this was a very serious offence, and a very strong message must be sent to society that the taking of a life, whatever the circumstances, is unacceptable and the perpetrator must be held responsible.
- [36] Price Findlay-J stated that the court must look at the minimum term to accurately reflect the seriousness of the offence. She opined that having reviewed the aggravating and mitigating factors and the reports of the psychiatrists and psychologists, a court after trial would have imposed a sentence of life imprisonment. Having concluded that the convict is entitled to a reduction in

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<sup>11</sup> (1974) 60 Cr App Rep 74.

sentence, the learned judge stated that an appropriate sentence in the matter would be 35 years to run from the date of remand.

[37] As Lord Justice Judge stated in paragraph 3 of **R v Peters and others**:<sup>12</sup>

“It is critical to any informed understanding of the sentencing decision, however, that the precise circumstances of and in which each crime is committed are different from each other. Each victim is a different individual, so is each defendant. Unless a mandatory sentence is prescribed by statute, as it is for murder, the sentencing decision is not compartmentalized, nor capable of arithmetical calculation. .... because the circumstances of the offence and the offender vary and may vary widely, an individual sentencing decision appropriate for the unique circumstances of each case is required.”

[38] It cannot be disputed that the weight of mitigating factors diminishes the more serious the offence. This is very much so in this case. Factors such as good character, remorse, rehabilitation, guilty plea, co-operation with the police would certainly not carry much weight in the circumstances of this case. As important as the offender’s personal circumstances may be, rehabilitation of offenders is but one of the purposes of sentencing. The punishment of offenders and the protection of the public are also at the heart of the sentencing process. Taking someone’s life is a most serious offence.

[39] The core underpinning the concept of rehabilitation is at least the substantial reduction of the risk of future offending. That can, of course never be definitely assessed, but various forms of evidence of it, of varying cogency, may be adduced. One is simply that the criminal has committed no offences since his release: how cogent that is will depend on the circumstances. Others may include formal assessments of the risk of future offending and/or the taking of courses or other measures designed to address the causes of the offending behaviour.<sup>13</sup> The weight rehabilitation will bear will vary from case to case but it will rarely be of great weight.

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<sup>12</sup> [2005] EWCA Crim 605.

<sup>13</sup> HA (Iraq) v Secretary of State for the Home Department, [2020] EWCA Civ 1176 at paragraph 135.

- [40] The Social Inquiry Report was one of the factors the judge would have considered in the evaluative exercise she conducted. In the context of serious offences, good character and exemplary conduct should not normally be given any significant weight and will not justify a substantial reduction in what would otherwise be an appropriate sentence. There is no justification for departing from that position here.
- [41] The learned judge's decision must be read as a whole. She considered all the evidence. The judge will invariably have to consider the extent to which the offences are attributable to the mental disorder; the extent to which punishment is required and the protection of the public including the regime for deciding release. The learned judge did not fail in that regard. I note here that Dr. Rix found that Gurrie was aware of the nature and quality of his acts. He stated in his report, 'he knew he was killing them'. The learned judge would have been cognisant of that.
- [42] The learned judge conducted the necessary exercise of considering the aggravating and mitigating factors and was very well placed to weigh them and come to a view as to the appropriate sentence. She regarded the mitigating factors as being outweighed by the aggravating ones. The mitigating factors influenced the court in passing the sentence it did, in particular the recommendation for periodic evaluations and the proviso stipulating a minimum term of imprisonment.
- [43] Where an offender suffers from a mental disorder which contributed significantly to the offence, the court has a duty to look ahead to see if it is possible that the risk of re-occurrence can be substantially reduced if not completely eradicated. In her sentencing decision, the learned judge noted that none of the professionals gave any indication as to what treatment, if any, the convicted man should receive and did not indicate whether he was a threat to society at large. In my judgment, the learned judge crafted a sentence which was appropriate given the circumstances before her.

- [44] The personal mitigation could carry only comparatively limited weight in the circumstances of this double-murder. The sentencing judge had to remind herself and take into account, as she did, the importance of the penal element in sentencing; in that regard the harm caused by the offence is taken into account. The fact that the offender would not have committed the offence but for mental illness, does not necessarily relieve him of all responsibility for his actions. There should also be a focus on the catastrophic consequences of the offence namely the death of two persons. The judge had to examine the nature of the violent act. In the circumstances, the criticism that the learned judge disproportionately focused on prevention and retribution is not well-founded.
- [45] The judge assessed the personal culpability of Gurrie. His personal mitigation was a relevant consideration but could only carry limited weight in the circumstances of the case. The crucial question for this Court is whether the sentence passed gives so little weight to the mitigating factors that it can be said to be wrong in principle or manifestly excessive. In my judgment, the answer is in the negative. The learned judge duly considered the mental state of the appellant as evinced in the psychiatric reports. It is not for this Court to substitute its own views on the comparative weight and importance of the different factors for those of the sentencing judge.<sup>14</sup>
- [46] With respect to the mental health issue, the learned judge would have been entitled to conclude that they did not mitigate the seriousness of the offence itself and was best placed to assess whether they provided any mitigation or the extent that such mitigation should reduce the appropriate sentence. Given the most serious offence of murder such personal circumstances of the offender would inevitably assume less significance than they would in relation to a less serious offence. I am not of the view that the learned judge erred in the exercise of her discretion in her approach to those personal circumstances. Ultimately, the question for this Court is whether the term of imprisonment can be said to be wrong in principle or manifestly

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<sup>14</sup> See *R v Allison* [2021] EWCA Crim 1670 at paragraph 15.

excessive. I do not find that the imprisonment imposed is wrong in principle or manifestly excessive.

[47] In conducting the sentencing exercise, Price-Findlay J performed a holistic exercise. She considered the aggravating and mitigating factors. The learned judge spoke to the gravity of the offence, the character and record of the offender, the subjective factors which may have influenced his conduct, the design and manner of the execution of the offence, and the possibility of reform and social re-adaptation of the offender. With respect to the gravity of the offence, she stated that murder is one of the most heinous offences, in this case two men were killed in a gruesome manner, by being beheaded.

[48] I take into account that the learned judge reached a multi-factorial judgment, in which a number of facts were assessed and evaluated. As Arden LJ stated in **Langsam v Beachcroft LLP**:<sup>15</sup>

“The correctness of the judge’s evaluation is not undermined, for instance, by challenging the weight the judge has given to elements in the evaluation unless it is shown that the judge was clearly wrong and reached a conclusion which on the evidence he was not entitled to reach.”

Seeking to focus on discrete parts of what is a holistic exercise to illustrate that the judge got the evaluative exercise wrong, does not find favour with the Court.

[49] In so far as some of the criticisms of the appellant can be construed to mean that the learned judge failed to give the evidence a balanced consideration, I note that an appeal court can set aside a judgement on that basis only if the judge’s conclusion was rationally insupportable. As indicated, the learned judge considered all the material evidence. The weight which she attached to it is pre-eminently a matter for her, subject to the requirement that the findings be such as might reasonably be made. An appellate court could therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if

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<sup>15</sup> [2012] EWCA Civ 1230 at paragraph 72.

the judge's conclusion was rationally insupportable. The decision of the judge was not rationally insupportable. In so far as the appellant challenged the attribution of weight or invited this Court to reattribute weight, for the reasons indicated, those grounds must fail.

[50] Mr. Ferguson complained that the learned judge failed to indicate how she arrived at 35 years imprisonment. There was no starting point for the sentence. The judge gave no indication of what the original sentence would have been prior to reduction, or how much she reduced it, having said the appellant is entitled to a reduction in sentence. There was no indication how the learned judge treated time spent on remand. There was no arithmetical deduction when assessing the length of the sentence. The judge stated that she gave a discount for the guilty plea, but did not state the amount.

[51] Mr. Ferguson further complained that though the learned judge repeated the principles of sentencing stated the relevant facts of the case, and listed the aggravating and mitigating factors, she failed to apply them in an analytical exercise that would lead her to a fair and proper sentence in accordance with the law. The judgment is devoid of analysis and reflects the conduct of a mechanical exercise, without contextualizing the actual sentence. 35 years jumps out of the picture from nowhere.

[52] Mr. Nelson, QC contended that the court did not draw 35 years from the atmosphere but reviewed the list of sentences passed in the jurisdiction from 2000 to 2011 submitted by counsel for the appellant, which she found to be extremely helpful. Mr. Nelson submitted that although the mental state was a mitigating factor, the judge could not rely on it to pass a manslaughter sentence as opposed to one for murder; diminished responsibility not being part of the laws of Grenada. Mr. Nelson stated that after a trial, taking all the factors and reports into account, the learned judge indicated that she would have imposed a life sentence. He contended that the range is well-within that passed for non-capital murder.

[53] Mr. Nelson further stated that at the time of sentencing there was no formula quantifying the percentage or quantum of reduction or addition for aggravating or mitigating factors. The judge was under no obligation to detail same. She was only required to highlight the factors being taken into account and to conduct a balancing exercise between the aggravating and mitigating factors. I agree.

[54] With respect to the time spent on remand, guidance is obtained from the judgment of Sir Paul Kennedy in **Callachand v The State of Mauritius**<sup>16</sup> at paragraph 9:

“In principle it seems to be clear that where a person is suspected of having committed an offence, is taken into custody and is subsequently convicted, the sentence imposed is the sentence which is appropriate for the offence. It seems to be clear too that any time spent in custody prior to sentencing should be taken fully into account, not simply by means of a form of words but by means of an arithmetical deduction when assessing the length of the sentence that is to be served from the day of sentencing.”

[55] The facts are that Gurrie was remanded in custody on 3<sup>rd</sup> May 2010; charged with murder on 5<sup>th</sup> May 2010; committed to stand trial on 16<sup>th</sup> November 2010 and indicted on 4<sup>th</sup> January 2011 for two counts of murder. He was arraigned on 11<sup>th</sup> January 2011 and pled not guilty to both counts. A jury was empanelled on 16<sup>th</sup> January 2013 and discharged the following day due to unresolved legal issues on the appellant's part. The case was fixed for trial on 9<sup>th</sup> October 2013. On that day, prior to the commencement of the trial, upon the request of his counsel, Mr. Ferguson, Gurrie was re-arraigned and pled guilty to both counts.

[56] At the date of sentencing the appellant had spent three years and six months in prison. Mr. Nelson, QC contended this was taken into account by the judge when she ordered the sentence to run from the date of remand.

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<sup>16</sup> [2008] UKPC 49.

- [57] In keeping with **Callachand v The State of Mauritius**, I would specifically add that the 3 years and 6 months that the appellant spent on remand is to be deducted from the 35 years sentence imposed.
- [58] As matters stand, the position is that a judge is under no duty to provide expansive sentencing remarks. Sentencing remarks should not be unduly lengthy. Relevant guidance is obtained from **R v Chin – Charles and R v Cullen**<sup>17</sup>. The sentence must be located in the guidelines. In general, the court need only identify the category in which a count sits by reference to harm and culpability, the consequent starting point and range, the fact that adjustments have been made to reflect aggravating and mitigating factors, where appropriate, credit for plea (and amount of credit) and the conclusion. It may be necessary, briefly, to set out what prompts the court to settle on culpability and harm but only where the conclusion is not obvious or was in issue, and also to explain why the court moved from the starting point. Finding of facts should be announced without, in most cases, supporting narrative.
- [59] In **Chin – Charles and Cullen**, Maldon CJ stated at paragraph 7, that there has been a tendency in recent years, understandably, but unnecessarily, to craft sentencing remarks with an eye to the Court of Appeal rather than the primary audience identified by Parliament. This has led to longer and longer remarks. It is not unusual to find the equivalent of a judgment, with extensive citation of authority, detailed discussion of the relevant guidelines, expansive recitation of the various arguments advanced and a comprehensive explanation of the resolution of factual and legal issues. This should be avoided. The Court of Appeal always has the Crown's opening and any note for the sentencing hearing, and a record of mitigation advanced. In many cases both sides have produced notes for sentencing. The Court of Appeal will have the pre-sentence report. None should be exhaustively rehearsed in sentencing remarks and, if mentioned, only briefly. I commend the approach articulated in **R v Chin – Charles**.

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<sup>17</sup>[2019] EWCA Crim 1140 at paragraphs 10 and 11.

- [60] During the course of the appeal hearing, the report of Dr. Dick Burkhardt, a psychiatrist, neurologist and psychotherapist, dated 15<sup>th</sup> March 2022 updating the mental status of the appellant was admitted as fresh evidence. The report was commissioned at the request of the appellant's counsel. There was no objection from the Director of Public Prosecutions. With respect to clinical impression, Dr. Burkhardt found no family history of mood disorder, suicide, alcoholism or psychosis. The appellant consumed low to moderate amounts of alcohol (beer) recreationally, mainly on weekends. He never experienced any hallucinations or delusions. His thinking is coherent. Dr. Burkhardt found that Gurrie was not currently suffering from negative and or positive symptoms of psychosis.
- [61] Dr. Burkhardt opined that Gurrie's condition on 3<sup>rd</sup> May 2010 can best be explained with the diagnosis of a rare 'pathological alcohol intoxication'. This condition is described as a condition characterized 'by sudden and extreme changes in personality, mood, and behaviour following the ingestion of an amount of alcohol usually considered to be too little to account for the degree of the changes. It may include extreme excitement, impulsive and aggressive behaviour (at times to the point of extreme violence). Persecutory ideas, disorientation, and hallucinations. The episode ends when the individual may fall into a deep sleep, after which there is often complete loss of memory for it. Some researchers believe that the condition may be related to stress or may be due in part to a psychomotor seizure triggered by alcohol. However, the diagnosis of 'pathological intoxication' is controversial.
- [62] From a medical (psychiatric) point of view, Dr. Burkhardt opined that it is very likely (and it can definitely not be excluded) that Gurrie suffered from a pathological intoxication on the 3<sup>rd</sup> of May 2010 at the time of the alleged delict. Consequently, he was very likely under the influence of 'sudden and extreme changes in personality, mood and behaviour following the ingestion of an amount of alcohol – usually considered to be too little to account for the degree of changes.' Mr. Steve Gurrie might have had 'extreme excitement, impulsive and aggressive behaviour'

(at times to the point of extreme violence) persecutory ideas, disorientation, and hallucinations.’ Hence, he was very likely not able to assess situations and facts realistically and consequently not able to think critically.

[63] Dr. Burkhardt reviewed the reports of Dr. Swaby, Dr. Rix and Dr. Wood. He stated he did not believe that the appellant was under a psychotic episode at the time of the commission of the crime. It is more likely that he suffered from psychological intoxication. He concluded that the appellant is further dangerous to the public because it cannot be excluded that alcohol use in the future might cause the same or similar condition that he experienced on 3<sup>rd</sup> May 2010. Only complete abstinence of alcohol can prevent the development of further identical or similar conditions in the appellant.

[64] Where fresh evidence is adduced on a criminal appeal it is for the Court of Appeal, assuming it accepts it, to evaluate its importance in the context of the remainder of the evidence in the case. Post-sentence information may impact on and produce a reduction in sentence. Having regard to the evidence of Dr. Burkhardt, there is no basis to interfere with the sentence of the learned judge.

[65] The sentence imposed was within the range reasonably available to a sentencing judge properly weighing the relevant factors. The sentence was rationally supportable. It cannot be said to be manifestly excessive. The learned judge crafted a sentence which was appropriate to the circumstances of the case. Sentencing is not a mathematical exercise with a formulaic or linear approach.<sup>18</sup> The fixing of a minimum period to be served for murder cannot be approached as an entirely mathematical exercise. It involves a weighing of material factors. An appellate court would scarcely intervene unless the sentence is wrong in principle or manifestly excessive. We find no basis to interfere with the sentence.

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<sup>18</sup> See paragraph 10 in *Joseph v R* [2018] EWCA Crim 2375.

[66] For all the reasons indicated, the appeal was dismissed, and the sentence of the learned judge affirmed.

I concur.  
**Gertel Thom**  
Justice of Appeal

I concur.  
**Paul Webster**  
Justice of Appeal [Ag.]

**By the Court**

**Chief Registrar**