

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

IN THE HIGH COURT OF JUSTICE

SKBHCR2018/0005

DIRECTOR OF PUBLIC PROSECUTIONS

V

**BRANDON LEE WELLS
TRAVIEN LIDDIE**

Before: The Hon. Mr. Justice Trevor M. Ward QC

Appearances:

Mr. Valston Graham, DPP, and Mr. Tessaun Vasquez for the Crown.
Mr. Chesley Hamilton and Mr. Perry Joseph for the 1st Defendant.
Ms. Natasha Grey and Mr. Mikhail Charles for the 2nd defendant.

2020: October 01;
November 06.

JUDGMENT ON SENTENCE

[1] **WARD, J:** The defendants were jointly indicted for murder and attempting to pervert the course of justice. The trial commenced on 30th September, 2019 and concluded on 11th October, 2019. The 1st defendant (Wells) was convicted on both counts by unanimous verdict. The second defendant (Liddie) was convicted by majority verdict on the count of murder and unanimously on the count of attempting to pervert the course of justice. Upon pronouncement of the verdicts, the learned Director of Public Prosecutions gave notice of the prosecution's

intention to seek the death penalty for both defendants. This was subsequently reduced to writing by Notice filed 14th October, 2019. The court therefore ordered the preparation of Social Inquiry Reports and psychiatric assessments in relation to both defendants. Challenges relating to the garnering of some of the material necessary to complete a proper psychiatric assessment coupled with the largely uncooperative attitude of Travien Liddie towards the assessment process, impeded the earlier completion of the psychiatric reports. The last of these was received on 28th July, 2020. Thereafter, the court proceeded on break. When final written submissions and authorities on sentence were received, the sentence hearing was conducted on 1st October, 2020. This is the court's judgment on sentence.

Summary of the prosecution's case

- [2] The deceased, 17 year old High School student, Leanna Napoleon, and Wells were maternal half-siblings. Following the death of their mother, the deceased resided with a guardian, Yvette Greaux, while Wells continued to reside by himself at the family home at Buckley's Estate until December, 2016 when Judanja Edmeade moved in as a paying room-mate. There was long running tension between the deceased and Wells. He viewed her frequent visits to the family home as being for the purpose of stirring up confusion over its ownership and occupation with a view to gaining control of it. Wells therefore resolved to kill her. He often said this to Edmeade between December, 2016 and the day of the murder.
- [3] On the morning of 8th May, 2017, Wells told Edmeade that he would kill the deceased that day. Edmeade tried to dissuade him but he was resolute. The deceased was due to write the CXC English exam at the Clarence Fitzroy Bryant College that day. She was last seen alive around 2:00 p.m. by her schoolmate, Nabylla Huggins, who had accompanied her twice that afternoon to the home of Wells, ostensibly to retrieve a cell phone from him. On both occasions, Wells was

not at home but Nabylla saw Liddie in the house. After leaving the house on the second occasion, she parted company with the deceased around 2:00 p.m.

- [4] Edmeade returned home at around 3:00 p.m. He was unable to enter the house because it was locked and battened down. When he tried to gain access Wells told him not to come inside. He therefore decided to go to a room downstairs. Just then another mutual friend, "Chiney man", appeared and they both went downstairs. While there, they heard quite a commotion coming from upstairs which sounded like pounding noises and scurrying footsteps. This went on for about an hour. Their curiosity peaked, Edmeade and Chiney man ventured towards the base of the stairway. Edmeade heard the sound of a female gasping which he determined was coming from the area of the bathroom. At that point Wells emerged from the house and asked Edmeade to go purchase some cleaning agents and a mop. Edmeade did so using a vehicle that Wells had borrowed from a friend. On his return, he handed the items to Wells, and from where he stood he observed that Liddie was also in the house. He remained standing outside. After a while, Wells and Liddie emerged from the house. Wells said that they had to find somewhere to go and that they would go to the mountain to find somewhere to bury "Tiny", meaning the deceased. "Chiney man," Wells and Liddie fetched the body from the house. Wells instructed Edmeade to fetch the car. They placed the deceased's body into the trunk. It was wrapped in a sheet secured by rope. They also placed a shovel into the vehicle. They then proceeded to the Olivees mountain where they dug a grave and buried the deceased. Later that night, Wells told Edmeade that he would make a report to the police the following morning that his sister was missing. He also told Edmeade him that if he was questioned by the police, he should provide a false alibi for him placing him at Edmeade's workplace.

- [5] When the deceased did not return home by 6:00 p.m., Ms. Greaux attempted to contact her on her cell phone. All calls went to voicemail.

- [6] On 9th May, Wells reported to the police that his sister was missing. He subsequently attended the Basseterre Police Station and made enquiries of WPC Maisha Liburd about the progress of enquiries into the whereabouts of the deceased. He made several follow up calls pursuing the same enquiries. By 12th May, 2017 WPC Liburd entertained suspicions that he had knowledge about her disappearance. He was therefore arrested and taken into police custody. An I-phone 6 that he had in his possession was seized. However, after three days he was released from custody pending further enquiries.
- [7] Over the ensuing days police conducted searches for the deceased throughout various parts of the island to no avail. A breakthrough occurred when, on 14th June, 2017, Junior Edmeade led a party of police officers to a bushy area in Buckley's. The police excavated an area of shrubbery. They dug down to about 4 feet and observed the remains of the deceased, still clad in her High School uniform, wrapped in what appeared to be a blue, green and white striped sheet. Officers from the Crime Scene Unit processed and photographed the scene. The body was taken away by undertakers. Ms. Greaux was notified of the gruesome discovery. She proceeded to the Jenkins Funeral home where she was shown the body which she positively identified as the deceased.
- [8] A post mortem examination was conducted by forensic pathologist, Dr. Valery Alexandrov. He concluded that death was due to a combination of severe blunt force trauma to the head combined with suffocation. The deceased's skull was crushed as a result of multiple, repeated and successive blows to the left and right side of the skull and forehead. The blows penetrated her brain causing massive injury to the brain with haemorrhage above and under the brain covering.
- [9] Dr. Alexandrov noted that a pair of male boxer shorts had been stuffed deep into the opening of the mouth that leads to the larynx and major airways, thus suffocating her.

- [10] After leading the police to Leanna's burial place, Junior Edmeade gave a statement to the police the following day, 15th June, 2017. His deposition was read into evidence.
- [11] The prosecution's case also rested on admissions made by both defendants under caution. In the case of Wells, he made an oral confession in the presence of police officers and Major Roxroy Campbell, a Salvation Army Minister of Religion and part time probation officer. In summary, he admitted to having an acrimonious relationship with the deceased from childhood which grew progressively worse over time. He admits planning to kill the deceased because he felt she wanted to take control of the house. On the fateful day, Wells bludgeoned the deceased in the head with a hammer. He was assisted by Liddie. When she was dead, they wrapped her body in a sheet and garbage bags and with the assistance of Edmeade and Chineyman, took her to the mountains where they buried her.
- [12] As it relates to Liddie, on 19th June, 2017, in the presence of Major Campbell and police officers and after caution, he opted to write a statement himself. In that statement he admitted to knowing about the plan to kill Leanna but said he was not in agreement. Nonetheless, he admitted to being present at the time of the killing and assisting by holding the deceased at one point and assisting in the removal and disposal of the body after the killing. He claimed to have participated out of fear because of threats made to him.

Discussion

- [13] In the Federation of St. Christopher and Nevis, the penalty for murder is prescribed by Section 3 of the **Offences Against the Person Act** Chapter (CAP 4.21) which provides:

"Upon every conviction for murder, the court shall pronounce sentence of death and the same may be carried into execution..."

- [14] It is settled, however, that the imposition of the death sentence is not mandatory. To regard it as such without the court considering the personal and mitigating circumstances of the prisoner would be in contravention of Section 7 of the Constitution which secures the right to be protected against inhuman or degrading punishment. See **Berthill Fox v The Queen**.¹ Nonetheless, it remains available as a discretionary option in appropriate cases. Settled jurisprudence says that the death penalty is reserved for cases that can be regarded as the “worst of the worst, the rarest of the rare”, See **Daniel Trimmingham v The Queen**.²
- [15] These principles are embodied in the Eastern Caribbean Supreme Court’s Practice Direction on Sentencing for Murder, Practice Direction 8E, No. 1 of 2020 which took effect from 01st September, 2020. This provides that the sentence of death may only be considered in cases: (a) where the offender was aged 18 or over when he committed the offence; (b) where there has been a conviction after trial; (c) which are ‘the rarest of the rare’; (d) which are the ‘worst of the worst’; (e) where there is no reasonable prospect of reform of the offender; (f) where the offender has been appropriately evaluated by a psychiatrist; (g) where the character of the offender and any other relevant circumstances are taken into account, so far as possible as mitigation in the offender’s favour; (h) which are compared with other murder cases and not with ordinary civilized behaviour and (i) where the object of punishment cannot be achieved by any means other than sentence of death.
- [16] While the learned Director of Public Prosecutions had initially sought to persuade the court that this case fell within the worst of the worst and the rarest of the rare, during the course of oral argument he was prepared to concede that the submission fails on the second limb of **Trimmingham**, in that the prosecution would not be able to prove that the defendants were beyond rehabilitation given the contents of the psychiatric report. Nonetheless, he submitted that the case would otherwise have met the threshold to be qualified as the worst of the worst

¹ [2002] UKPC 13

² [2009] UKPC 25

and the rarest of the rare. While academic in light of the concession on the second limb, the court should nonetheless record its view that such a submission would have been untenable as a comparison with the facts in the case of **Trimmingham** will demonstrate.

[17] In **Trimmingham**, the appellant, armed with a firearm, and in company with another man, attacked the 68 year old deceased who reared goats. He threw the deceased to the ground and demanded money. The deceased told him he could take the goats. The appellant took the deceased some distance off and struck him in the stomach, causing him to fall on the bank of a rain water ditch. He threw the deceased into the ditch. He then slit his throat using the deceased's cutlass. As he lay on his belly face down, the appellant held back his head and began to saw his throat. He then started to saw from the back of the neck until he reached bone; at which point he chopped off the deceased's head. He removed the deceased's trousers and wrapped his head in it. He returned to the ditch where he fondled the deceased's penis and uttered a foul remark. He then slit the deceased's belly telling the other man that he did so in order to prevent the body from swelling. He covered up the body and stuffed the trousers containing the head into a hole in a nearby field. The appellant took six of the deceased's goats which he later attempted to sell.

[18] The Privy Council characterised the facts as a very bad case of murder committed for gain and gruesome, violent and revolting, but did not consider it to represent the "worst of the worst" or the "rarest of the rare" as it was not comparable with the worst cases of sadistic killings. Accordingly, they held it was not deserving of the death penalty.

[19] Given that, it is hard to resist concurring with Baptiste JA's observation in **Mitchell v Joseph**³ where he stated:

"Thus far, the death penalty seems unable to survive the stranglehold imposed upon it by the first principle in **Trimmingham** - the worst of the

³ SLUHCRA2011/0001

worst. Undoubtedly, Trimmingham has severely injured the death penalty. It thus lies in a state of comatose on its deathbed induced by the deathblow of the “worst of the worst⁴.”

[20] In view of the foregoing, realistically speaking, the death penalty was never a viable sentencing option in this case and is not under consideration in this sentencing exercise. Nonetheless, the learned Director submitted that a whole life sentence was warranted on the facts and circumstances of this case.

[21] Before I may consider that a whole life sentence is an appropriate starting point, I must be of the view that the seriousness of the offence (or its combination with an offence with which it is associated) is exceptionally high and that the defendants were aged 18 or over when they committed the offences. The Practice Direction on sentencing for murder provides a non-exhaustive list of factors that would be indicative of an exceptionally high degree of seriousness. These include:

- (a) The murder of two or more persons;
- (b) Where the murder is associated with a series of serious criminal acts;
- (c) Where there is a substantial degree of premeditation or planning;
- (d) The abduction of the victim;
- (e) A murder involving sadistic conduct;
- (f) A murder involving prolonged suffering or torture;
- (g) The murder of a police officer, emergency service worker, prison officer, judicial officer, prosecutor, health worker, prison officer, judicial officer, prosecutor, health worker, teacher, community worker or any other public official exercising public or community functions or as a political activist, or if the offence arose because of the victim's occupation or voluntary work;
- (h) A murder relating to membership of a criminal gang;
- (i) A murder which is an act of terrorism;

⁴ At para 47.

- (j) A murder motivated by hatred for or prejudice against a group of people to which the offender believed the victim belonged (e.g. religion race, ethnic origin);
- (k) A murder involving the actual or threatened use of explosives or chemicals or biological agent;
- (l) A deliberate killing for payment or gain (e.g. contract killing or for inheritance or insurance payout.);
- (m) Where the offender is assessed as likely to commit further offences of serious violence and is therefore a substantial danger to the community;
- (n) A murder by an offender previously convicted of murder;
- (o) A murder by an offender who has a record of multiple previous convictions for serious offences of violence.

[22] As I approach the task of setting the starting point, I bear in mind that though the prosecution's case was premised on joint enterprise, I must still consider the roles actually played by each participant. Accordingly, the approach will be to assess each defendant separately.

Brandon Lee Wells

[23] The evidence which the jury accepted was that the motive for the murder of the deceased was to forestall any claim which she might later assert to the family home in which Wells resided. The evidence established that Wells had been plotting to kill her for several months. It was therefore a clearly premeditated murder for the purpose of eliminating the only threat to his enjoyment of exclusive possession and control of the family home. Factors (c) and (l) under the Practice Direction on sentencing for murder are therefore engaged. The offence is aggravated by the manner of its execution wherein a hammer was used to inflict multiple injuries to the head of the deceased after gagging her with a pair of boxer shorts. Her death must have been a painful and agonizing one. The offence is further and significantly aggravated by the fact that Wells and his friends sought to conceal the body, and thus shade the dastardly deed from discovery. See **The**

Queen v Albert Rosa de la Rosa⁵, where the court cited dicta in **R v. Wilkinson**⁶ that:

“The dumping of a body by a murderer constitutes an aggravating circumstance of the offence itself, and such concealment of the body is not limited in its significance to the absence of remorse.”

- [24] Applying the Practice Direction on sentencing for murder, the foregoing factors render a whole life sentence a presumptively appropriate starting point in the case of Wells.
- [25] Having set the starting point at a whole life sentence, the matter does not end there. The court must next consider whether there are any aggravating factors relative to the offence not already considered when setting the starting point. Given that the death penalty is off the table so to speak, even if there were additional aggravating factors, they would have no impact on the starting point. In any event there are no further aggravating factors relative to the offence.
- [26] The court must also consider at this stage whether there are any mitigating factors relative to the offence. There are none.
- [27] The court is next required to consider the personal circumstances of the defendant. The necessity for this arises in order that the court may have due regard to the penological objective of rehabilitation. This is so because, even where the court’s initial view is that a life sentence is appropriate, the personal circumstances of an offender may afford such powerful mitigation that it results in a life sentence being reduced to a determinate one. This proposition is lucidly articulated by Saunders, JCCJ in the Caribbean Court of Justice case of **Renaldo Anderson Alleyne v The Queen**⁷:

⁵ BVIHCR2014/0022

⁶ (No. 5) [2009] NSWSC 432

⁷ [2019] CCJ 06

“Life sentences fall into a unique category of sentences. If, after considering all of the aggravating and mitigating circumstances of the offence (as distinct from those of the offender) a judge is initially disposed to impose a life sentence, that disposition can be softened in appropriate cases upon a consideration of the mitigating circumstances that relate to the offender. That would be because matters such as the offender’s early guilty plea or his age or level of remorse or social or economic circumstances cause a judge to moderate his or her original disposition in favour of a lesser sentence measured in terms of years or months.”⁸

[28] Caribbean jurisprudence is to clear effect that where there is evidence or information to suggest that rehabilitation is attainable, a court must be slow to incarcerate an offender for the rest of his natural life. See **Nicholas et al v The State**⁹ and **Rudolph Lewis v The Queen**.¹⁰ In **Nicholas**, the Court of Appeal of Trinidad and Tobago conducted a survey of a number of cases from the Eastern Caribbean and summarised their findings thus:

“The judges of the Eastern Caribbean Supreme Court, in the aforementioned cases, in considering the imposition of a sentence of life imprisonment have taken into account: 1) the seriousness of the conduct of the appellant; 2) the expression of genuine remorse; 3) probation reports to gauge whether the appellant is fit for social re-adaptation; 4) the antecedents of the appellant; and 5) the presence of pre-meditation. Therefore, a life sentence is inappropriate where on a consideration of all of these circumstances, the balance is tipped in favour of the appellant. Apart from the circumstances of the offence what must loom large in considering whether a life sentence is appropriate is the possibility or likelihood of the appellant being rehabilitated to the extent that he could be safely returned to society. Where there is evidence or information to

⁸ At para. 79.

⁹ Trinidad & Tobago, C.A. Crim. 1-6/2013.

¹⁰ HCRAP 2009/016.

suggest that this goal is achievable, a court must be slow to incarcerate an appellant for the rest of his natural life.¹¹”

- [29] Guided by the foregoing principles, which accord with the Sentencing Guidelines for murder, I turn now to a consideration of the personal circumstances of Wells with a view to assessing his prospects of rehabilitation and to consider any other mitigating factors.
- [30] The personal circumstances of Wells are thoroughly explored in the comprehensive and insightful assessment conducted by psychiatrist, Dr. Izben Williams and in the Social Inquiry Report authored by Ms. Tivanna Wharton.
- [31] Dr. Williams possesses impeccable academic qualifications and considerable practical experience in his field. He has practised as a consultant psychiatrist in St. Kitts and Nevis and in several other Caribbean States as well as in the United States and Canada. A qualified medical practitioner since 1977, he holds a Doctor of Medicine degree; a specialist qualification in psychiatry, i.e. Doctor of Psychiatry and a Master of Public Health Policy. He holds membership in the American Academy of Psychiatry and the Law and is an International Fellowship of the American Psychiatric Association. Dr. Williams is a professor in the Department of Behavioural Sciences and Medical Ethics at Windsor University School of Medicine, as well as clinical preceptor in psychiatry and an adjunct faculty in the Department of Psychiatry of Dalhousie University, Nova Scotia Canada.
- [32] Dr. Williams’ report has been informed by the Social Inquiry report authored by Ms. Tivanna Wharton, interviews with the former partner of his mother, former teachers, prison counsellor, prison tutor and defence counsel. Documentary sources reviewed include Wells’ statement to the police and depositions.

¹¹ At paras. 36-37.

- [33] Wells' life circumstances have been challenging. Wells was born on 20th November 1997, the first of two children to his parents who had migrated to St. Kitts in the mid 1990's. His father abandoned the family for a life in the United States when he was only two years old. His mother bore three other children by two men. Just as he was about to write his school-leaving exams his mother died suddenly at home early one morning of a heart attack. She had been his principal supporter and motivator. After her death he lost all motivation and saw no further utility in schooling. On his mother's death his three younger siblings were taken to live with relatives in St. Lucia and here in St. Kitts. He, having no one else, continued to live alone in the family home.
- [34] Dr. Williams reports that clinical interviews revealed that unfavourable circumstances within his family life and his social environment caused him to be clinically depressed for much of his childhood into adolescence. The relationship between him and the deceased had been mostly acrimonious, falling just short in many instances of doing physical harm to each other. His circumstances saw him progress into a major depressive state and he soon kept company with sundry disreputable friends. The daily consumption of cannabis became a staple. This resulted in what Dr. Williams termed "an incapacitating Amotivational Syndrome." Clinical enquiry revealed that Wells had become truant, disinterested in formal education, apathetic and lethargic. All of these psychological symptoms are features of this condition said Dr. Williams, which were exacerbated on the death of his mother. He would often be told that not even his father wanted him and that he should leave the house. Dr. Williams therefore opines that there is a strong likelihood that his major depression and Amotivational Syndrome secondary to Cannabis abuse influenced his mental state in a manner sufficient to contribute to the commission of the offence.
- [35] As it relates to his prospects for rehabilitation and potential danger to the society, Dr. Williams is optimistic that Wells is as good a candidate as any with whom to employ sound rehabilitative measures. In his words:

“He has initiated his own rehabilitative process by immersing himself in academic work, attaining six (6) additional CSEC subjects and (6) CAPE subjects since early 2018 (he is currently writing his last few CAPE subjects, to be completed by early July 2020). In his view Wells’ broad subject areas of study; his experience of incarceration and his ability to excel despite the challenge of a restrictive, regimented and uncomfortable setting; the time he has had for sober reflection on how he got to the place; his enhanced knowledge-base, and his insightful intelligence should all have melded to shape a strong character, and to better prepare him for whatever his future may hold, within or without prison. I deem him a good candidate for rehabilitation and verily belief [*sic*] that with the aid of sound therapeutic rehabilitation measures, including the gradual development of a social support network he could be returned to society at whatever time the court considers appropriate, a reformed and useful citizen.”

[36] Dr. Williams records that Wells’ natural intelligence has been attested to by his High School teacher, his prison tutors and others who were close to him when he was growing up. His academic prowess earned him recognition when he was adjudged the best student of the prison education system in 2019. Based on his overall comportment, his academic accomplishments and his capacity to excel despite his very grave circumstances, he is now under consideration to be one of the prison-school tutors.

[37] Dr. Williams’ report also addresses whether Wells would likely pose a danger to society if released. He states:

Regarding Brandon-Lee’s representing a danger to society (if and when he is released): Applying the criteria of the Assault & Homicidal Danger Assessment Tool, which has been adopted by the American Academy of

Psychiatry and the Law, my assessment is that this young man currently offers low risk of assault or homicide and I therefore position him at level 2 of 5 (five being very highest risk level and one the lowest). Of particular significance, there is no evidence of him having had any assaultive, homicidal or paranoid ideation; since his incarceration there have been no reports of him perpetrating impulsive acts or having homicidal tendencies; he has also had no angry verbal outbursts, nor has he manifested any acting-out behavior. It should also be borne in mind that he has not had access to cannabis or other substance of abuse since his incarceration, therefore assessments of his mental state and substance habits should be surveilled as part of any release consideration¹².”

[38] Additionally, there are other mitigating factors of which the court must take cognizance. At the time of the commission of the offences, Wells was a young man of 19 with no previous convictions. He has expressed remorse for his actions. At page seven of the Social Inquiry Report he is recorded as saying:

“There is nothing I could say that could ever make it right for any party involved in this case. However, I am truly sorry that anyone had to feel such pain as to lose a loved one [*sic*] and my sister never deserved such a fate. I hope society will one day forgive and see me in a different light. I also hope that I would be able to forgive myself.”

[39] All of these matters constitute mitigating factors and are regarded as such under the Practice Direction.

Assessment

[40] As I consider what weight should be attached to these mitigating factors I call to mind the injunction of the Eastern Caribbean Court of Appeal in **Mervyn Moise v The Queen**¹³ that:

¹² Forensic Psychiatric Report, p. 13.

¹³ SLU Crim. App. No. 8 of 2003 at paras 18 and 19.

“It is a mandatory requirement in murder cases for a Judge to take into account the personal and individual circumstances of the convicted person. The Judge must also take into account the nature and gravity of the offence; the character and record of the convicted person; the factors that might have influenced the conduct that caused the murder; the design and execution of the offence and the possibility of reform and social re-adaptation of the convicted person. ..The Judge may accord greater importance to the circumstances which relate to the commission of the offence. However, the relative importance of these factors may vary according to the overall circumstances of the case.”

- [41] Given my initial view that a life sentence is commensurate with the seriousness of the offence, the question, therefore, is whether the mitigating factors identified above, when placed in the scales with the aggravating factors, have the effect of yielding a reduction of the life sentence to a determinate one. I regard the dicta of Saunders JCCJ in **Reynaldo Anderson Alleyne** to be instructive on this point:

“The circumstances relating to the offence may be so ghastly that the judge is inclined to regard life imprisonment as being eminently appropriate and therefore commensurate notwithstanding the mitigating circumstances of the offender put forward. In other words, the judge may consider that a particular offence and its consequences are so serious that neither an early guilty plea nor any other mitigating factor can, in that particular case, serve to reduce the life sentence.¹⁴”

- [42] I do not interpret any of the authorities cited herein on the balancing exercise between aggravating and mitigating factors - including prospects for rehabilitation - to mean that once an offender advances mitigating factors and/or presents good prospects for rehabilitation that a life sentence is automatically off the table. For that to occur, the mitigating factors must outweigh the aggravating features of the

¹⁴ At para. 80.

case, thus tipping the balance in favour of the offender. By my calibration, in this case, they do not.

[43] Looking at matters in the round, and with every sympathy for the personal circumstances which confronted Wells, I cannot resist the conclusion that it was his own voluntary consumption of drugs on an almost daily basis that contributed in large measure to his rapid descent. There must be many persons afflicted with depression and cognitive impairment who do not resort to the consumption of copious quantities of drugs as a coping mechanism.

[44] Notwithstanding the mitigating factors put forward, given the pre-meditated plan to murder the deceased in order to prevent her asserting any claim to the family home, the brutal manner of her death and the disgraceful manner in which her body was disposed of to shield the defendants from prosecution, compounded by Wells' hypocritical and feigned charade of concern played out with the police, I am of the view that a life sentence is commensurate with the seriousness of the offence.

[45] But this does not mean the defendants' prospects for rehabilitation while in prison are discarded or ignored. In passing a life sentence, the court may stipulate a minimum period which he must serve before becoming eligible for consideration for release. This serves to fulfil the objectives of punishment and deterrence and leaves the door open for rehabilitation.

The jurisdiction to stipulate a minimum term

[46] It might be thought that in the absence of a statutory system of parole in the Federation of Saint Christopher and Nevis, a court might not be empowered to stipulate a minimum term of imprisonment to meet the objectives of punishment and deterrence when passing a sentence of life imprisonment. During the course of oral argument, I invited the crown and the defence to file supplemental submissions on this point and referred them to the case of **William Benjamin v**

DPP,¹⁵ on which the defendants relied, and to the **Reynaldo Anderson Alleyne** judgment which addressed this issue.

[47] In **William Benjamin v DPP** the appellant was convicted of murder and sentenced to life imprisonment with the proviso that:

“...he should spend the maximum of time in prison before any consideration is given to extending to him the mercy of release unless he earlier demonstrates that he has made significant progress in his character.”

[48] On appeal, in affirming the sentence of life imprisonment, the Court of Appeal ordered that in the absence of a proper parole regime, the Appellant could apply to the High Court after twenty five years for a review of his sentence supported by all necessary documents and reports but if such a regime were put in place prior to the expiration of 25 years, the appellant would be subject to that regime instead.

[49] The Court of Appeal was in effect setting a tariff or minimum period to be served before the appellant could be considered for release. Plainly, the Court of Appeal was well aware at the time of fashioning that order that there was no parole system in place but did not seem to view that as an impediment to making the order it did.

[50] With the advent of the Practice Direction on sentencing for murder, provision has been made for the setting of such a tariff when imposing a life sentence. It provides at paragraph 17:

“Where appropriate, the court should declare the minimum term to be served before consideration for parole.”

¹⁵ High Court Criminal Appeal of CCA No. 6 of 2009

[51] While the reference is expressly to “parole” I do not interpret this to mean that it is only where a formal or statutory parole system is in place that the court is empowered to stipulate a minimum period to be served. Even in the absence of a formal system of ‘parole’, the court has an inherent jurisdiction to make an order prescribing the period to be served to satisfy the penological objectives of punishment and deterrence. I derive support for this proposition from the dicta of Anderson, JCCJ in **Reynaldo Anderson Alleyne**, a case out of Barbados where, at the time, no minimum tariff was set when a life sentence was imposed and where there was no legislation, regulation or sentencing guidelines authorizing or guiding the imposition of a tariff. His Honour stated:

“The recommendation of a minimum period of sentence when imposing a life sentence, sometimes referred to as issue of tariffication, has been addressed in some jurisdictions through legislation which charts the maximum and minimum sentences for statutory offences often encountered in practice. In Jamaica, for example, where a sentence of life imprisonment is imposed pursuant to section 3(1)(a) of the Offences Against the Persons Act, the court must specify a minimum period of not less than 20 years which the convicted person should serve before becoming eligible for parole...

But judicial recommendation of a minimum period of incarceration when handing down life sentences is not fundamentally based on the authority of legislation. There are rather more profound considerations at stake. Sentencing is quintessentially a judicial function and is first and foremost an exercise of judicial discretion...

This Court has emphasized its unhesitating acceptance that the rehabilitation of the offender is a factor that must be considered by the sentencing judge in fashioning the appropriate sentence and that it will be for others to say when rehabilitation has been accomplished. However, in discharging its judicial functions to fashion an appropriate sentence we are equally sanguine in the view that the sentencing judge when imposing

a life sentence (as distinct from a determinate sentence) not only has the authority but, we venture to say, the responsibility to recommend the tariff or minimum period of sentence to be served for purposes of deterrence and punishment. The judge, having within his or her purview, the detailed knowledge of the facts of the case, any instructive reports, should weigh up all the factors, aggravating as well as mitigating, and recommend, as a term of the sentence of life imprisonment, a tariff or minimum period to be served before there is any possibility of release. Recommending a minimum period of incarceration is consistent with the constitutional right to a fair hearing before an independent and impartial tribunal, protection of the law and equality before the law.”¹⁶

- [52] Based on the foregoing principles, it seems clear that, notwithstanding the absence of a parole system, this Court nonetheless has the jurisdiction and responsibility to recommend a minimum term which the defendant should serve before becoming eligible for consideration for early release. While there is no parole system in St. Christopher in Nevis, there are other mechanisms under the Constitution by which a convicted person may become eligible for early release. In particular, section 66 gives to the Governor General, acting in accordance with the advice of the designated Minister, *inter alia*, the power to grant a free or conditional pardon to anyone convicted of any criminal offence; to impose a less severe form of punishment for that imposed on any person and to remit the whole or part of any punishment imposed on any person. This means that a life sentence may not necessarily mean that a person is incarcerated for the rest of his natural life since the prerogative of mercy may be extended to him or her at any time. It seems likely that it was with this provision in mind that the sentencing judge in **Benjamin** framed his order. Where a court stipulates or recommends a minimum period or tariff, this is, of course, without prejudice to the constitutional regime and the powers of the Governor-General. I shall shortly return to consider what that tariff should be.

¹⁶ At para 65.

[53] For the reason discussed above, I have found that the degree of seriousness of this offence is exceptionally high, thus justifying the imposition of a life sentence. I have given careful consideration to Wells' personal circumstances and weighed them against the circumstances surrounding the commission of the offence. I find that they do not outweigh the aggravating factors.

[54] Accordingly, on the count of murder the defendant, Brandon Lee Wells, is sentenced to life imprisonment and shall serve a minimum term of 35 years before being eligible for consideration for early release. In setting this term I have taken account of your very good prospects for rehabilitation and the time you have spent in custody.

[55] On the count of attempting to pervert the course of justice which carries a maximum sentence of life imprisonment, the facts and circumstances that constitute this offence relate to the attempt to dispose of the body of the deceased after the murder. This was treated as an aggravating factor in the offence of murder and influenced the starting point of same. Accordingly, I impose a nominal sentence of 5 years imprisonment to run concurrent with the life sentence.

Starting point - Liddie

[56] As it relates to Liddie, there was no evidence that he shared Wells' motive or that he pre-meditated or pre-planned the death of the deceased. At its highest, it established that he was present and assisted in murdering the deceased. Liddie lent himself to an enterprise whose degree of seriousness is exceptionally high. But for the absence of pre-meditation and motive of gain on his part, the circumstances surrounding the commission of the offence are indistinguishable. The same matters identified earlier as constituting aggravating factors of the offence apply here. Accordingly, in his case a determinate sentence of 35 years must be considered the appropriate starting point having regard to the degree of seriousness.

[57] There are no further aggravating factors of the offence not already considered when setting the starting point and there are no mitigating factors relative to the offence. I therefore turn to consider Liddie's personal circumstances to determine whether the sentence should be adjusted upwards or downwards on account of anything disclosed.

Personal Circumstances

[58] Liddie was born on 09th March, 1999. He was the last-born of his mother's six children to four fathers. As a student, his teachers regarded him as remarkably slower intellectually than his peers. He lacked strong friendships and was introduced to Wells by a mutual friend. Together with other young men they would frequent Wells' house.

[59] Dr. Williams conducted eight assessment interviews, averaging one hour in duration, with Liddie. His report was also informed by interviews with relatives, teachers, prison counsellor and prison tutor, defence counsel and a Social Inquiry Report authored by Ms. Trevicia Clarke. Documentary sources reviewed include Liddie's statement to the police, depositions, medical certificates and hospital records. Dr. Williams also administered psychometric testing.

[60] Dr. Williams found himself challenged to elicit much by way of helpful information from Liddie. When he tried to solicit information relating to the circumstances of the commission of the offence, Liddie's responses were described as brief and evasive in nature. He would say, for example, "The past is the past and the future is the future, or, "Things just happen." According to Dr. Williams, "he seemed largely disconnected both from the interviewer and from his immediate environment. His speech was measured, his response delayed and punctuated with periods of unresponsive muteness. When he did speak the brevity and the evasive nature of his utterances invariably did not inform my enquiries any, nor contribute to helpful discourse."

- [61] I pause here to interject that the Probation Officer seems to have received a different response when she interviewed him. According to her, "Throughout the interview Travien was forthcoming with the requested information, he was also respectable. Travien asked questions when there was uncertainty. There were instances when he was jovial and on the hand very calm."
- [62] In view of Liddie's unhelpful posture towards Dr. Williams, he determined that there was need for psychometric evaluations. This revealed no evidence of thought disorder, illusory or delusional thinking. He once attempted to commit suicide while in police custody but denies any current suicidal or assaultive thoughts. He repeatedly claimed that the police tricked him into giving a false confession by promising that he would be released.
- [63] Intellectually, Liddie is below average in intellectual development for his age. His score in the Wide Range Achievement Test (Word Reading, Sentence Comprehension, Spelling, Math, Computation and Reading Composite) is significantly below the level of his age by a 3-4 year lag in the intellectual functioning expected of him. There was some evidence of borderline to lower normal cognitive impairment. Dr. Williams concludes that Liddie is afflicted with Intellectual Development Disorder and Poly-Substance Use Disorder; both of which would have pre-disposed him to involvement in and commission of the offences. By his admission, by the time of these offences he was smoking two joints of 'Sprang'(a cigarette of cannabis mixed with cocaine) several times a week. On a daily basis he would imbibe significant quantities of Appleton rum and a blend of Vodka and Black Label Whisky. Their effects would have left him with a level of cognitive dysfunction. It has been reported to Dr. Williams by a former teacher of Liddie that there is some family history of what Dr. Williams terms "mental insufficiency". Dr. Williams sums up his findings in the following way:
- "I can state with reasonable certainty that Travien Liddie was afflicted with a complex of psychological conditions at the time of his involvement in the offence for which he was convicted... In addition to the fact that his Poly-

substance use undoubtedly would have influenced his cognition and behaviours, including his vulnerability to the control of others , he would undoubtedly also have sustained neurological damage which may be enduring.”¹⁷

[64] As to Liddie's prospects of rehabilitation and potential danger to the society, Dr. Williams opines that because of his intellectual deficiencies, his dependency traits and his substance abuse diathesis, Liddie is unlikely to do well, at least initially, with independent living. Accordingly, Dr. Williams recommends the establishment of a multi-disciplinary prison rehabilitation team to work with him in an unrushed program that could prepare him for re-integration into society. His Poly-substance abuse would need to be addressed frontally.

[65] From the foregoing, I discern no aggravating factors relative to Liddie. On the credit side, by way of additional mitigation, Liddie was a young man of 18 at the time of these offences and had no previous convictions. He has also expressed remorse. While reticent when speaking to Dr. Williams , he was more forthcoming in his interview with the Probation Officer. At page 6 of the Social Inquiry report he is quoted as saying:

“My most sincere apologies goes out to the family, friends and the Federation on a whole for the loss of a young and aspiring human potential. I am truly sorry with many condolences and many grievances to our society. I pray that you do not have malice in your heart. As I said before I am truly sorry that this incident transpired. It is a very serious matter with consequences but I am pleading and begging for some leniency for a next chance to see light again, out in society. I have a sick mother out there.”

[66] Whereas Wells received a very positive assessment of his prospects for rehabilitation and of his potential risk of danger to the society being low, Liddie's

¹⁷ At page 13.

assessment under these heads is less encouraging as the report counsels cautious management of this process.

[67] Nonetheless, on account of the mitigating factors identified, the sentence is reduced to 33 years.

[68] I am advised that Liddie has spent approximately three (3) years in pre-trial custody. This period is deducted from his sentence.

[69] In the circumstances, Travien Liddie, on the count of murder, you are sentenced to 30 years imprisonment. On the count of Attempting to Pervert the Course of Justice, I impose a nominal sentence of 5 years imprisonment. Both sentences commence today and are to run concurrently.

[70] The industry and skill exhibited by counsel on both sides in their research and presentation of their written and oral submissions is acknowledged with gratitude.

**Trevor M. Ward, QC
High Court Judge**

By the Court

Registrar