

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA**

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

CASE NO: ANUHCR 2018/0004

BETWEEN:

THE QUEEN

vs

COREY MILLS

Defendant

Appearances:

Anthony Armstrong Director of Public Prosecutions of Counsel for the Crown
Pete Semaj McKnight of Counsel for the Defendant

2020: July 7th, 26th, 27th

Headnotes: *Criminal Law-sentence-murder-guilty plea to murder-considerations of aggravating and mitigating factors-age of the defendant-limited intellectual ability of the defendant-previous good character-starting point of 25 years- review under section 3b of the Offences Against the Persons Act. Cap 300.*

Decision on Sentencing

Background

- [1] **SMITH, J.:** On 23rd November, 2018 the defendant, Corey Mills entered a plea of guilty to the offence of murder before Thom, J (as he then was) and has been awaiting sentencing which was set to take place at the conclusion of the trial of his co-defendant, Ian Daniels. Daniels, however, changed his not guilty plea which had been entered on the aforementioned date to one of guilty to manslaughter on 2nd March, 2020. The prosecution accepted his plea to the lesser count and the

matter was adjourned for the sentencing of both defendants. However, on 7th July, 2020 it was ordered that the matter be severed with Corey Mills' matter proceeding to the sentencing phase.

Facts

- [2] The deceased in the matter was Mazen Daher, a Syrian national who had lived in Antigua for at least twelve (12) years at the time of his death. He operated a restaurant which was located at Old Parham Road and this business operated everyday except Sundays. He operated until 9:00 p.m. on weekdays and until 11:30 p.m. on the weekend.
- [3] On Saturday 23rd April, 2016 sometime after 11:00 p.m. the defendants went to Mr. Daher's establishment, armed with a firearm with the intention to rob him. The defendant Corey Mills in the course of the robbery shot and killed Mr. Daher. Both men were seen running into an alley nearby. The police were called after persons heard the gunshot and went to the restaurant. The police commenced their investigations and having reviewed CCTV footage and having interviewed several persons in the area, the defendants were taken into police custody by the following day.
- [4] On 24th April, 2016 the defendant, Corey Mills gave a caution statement to the police where he explained that it was his co-defendant who had gotten the gun and given it to him and suggested that they rob the deceased. He further stated that he was instructed that if Mr. Daher put up any resistance he was to shoot him. He explained that when they went inside, Daniels went up to Mr. Daher and demanded money but Mr. Daher put up a fight. According to him it was then that he was instructed to shoot and he shot the deceased in his chest. Daniels was then able to get a coil of money from the deceased and they fled. He said the gun was given back to Daniels who returned it to the person who had provided it. In a subsequent interview, he told the police that he was only given \$100 from the robbery.
- [5] Daniels gave his caution statement on 25th April, 2016 and he admitted that he agreed to participate in the robbery with Mills. He stated that Mills was armed with the gun and he went up to the deceased and took away his phone but the deceased started to fight back. He said he then heard a gunshot and the deceased fell so he took the money and ran.
- [6] A post mortem examination was performed on Mr. Daher on the 4th May, 2016 by pathologist Dr. Petra Miller-Nanton. She found an entry gunshot wound to the left chest which caused injury to the heart and right lung. That wound was associated with an exit wound to the right back. She opined that death was caused by penetrating injuries to the aorta and right lung due to a gunshot wound. Mr. Daher was 38 years old at the date of his death.

Psychiatric Report

- [7] The Family Medical Clinic prepared a psychiatric report authorized by consultant psychiatrist Dr. Griffin Benjamin. The doctor in that report indicated that *“Mr Mills was not diagnosed as suffering with any major psychiatric illness. He showed no signs of acute psychosis and his behaviour and thoughts were well organized on features of disorganization of speech or behaviour, no hallucinations or delusions. At the time of the assessment Mr. Mills exhibited no clinical feature of any medical illness. He has had no previous psychiatric consultations. However, he referenced a long history of multiple substance use, alcohol, marijuana and crack/cocaine and was able to associate his negative actions with the negative influence of the drugs used at the time”...me never know wa me ah do...me influence with drugs*. The author of the report also noted that the defendant was prone to blaming others for his predicaments and that he showed little remorse for his actions **at the time of the assessment** (my emphasis).

The Social Inquiry Report

- [8] A Social Inquiry Report was ordered by the Court and prepared by Ms. James-Pharaoh and received by the Court on 11th April, 2019. The interview with the defendant's mother revealed his father had died in St Kitts and the family had then migrated to Antigua and Barbuda. The defendant attended school here but dropped out at age nine (9) and that he is illiterate. Teachers at his primary school recounted what would become a recurring theme throughout the defendant's life, that he was a follower not a leader. Teachers at his primary school stated that he would *“follow the crowd in order to fit in”*. The teachers at the TN Kirnon Primary School observed that the defendant's academic performance was low and that he was unable to read. They described him as one who was *“quiet, untidy and one who lacked parental support”*.
- [9] In interviews conducted with his former employers one employer Mr. Marvin Schultz indicated *“the defendant is easily influenced and seems to act before he thinks things through”*. In relation to the murder of Mr. Daher, Mr. Schultz expressed that in his view the defendant *“could not have thought about such an act without the influence of others”*.
- [10] The defendant's mother indicated that he was given and forced to indulge in cocaine by members of the community. She also said that her son *“was a coward”* and that he was the victim of bullying in the past. The mother of his daughter was also interviewed by the writer of the report. She described the defendant as being peaceful, loving and not prone to violence. And that she did not know how he got caught up in the events surrounding the murder of Mr. Daher.
- [11] The report also stated that the defendant has expressed remorse for his actions however this is in direct contradiction with what the psychiatric report stated. In that report it was said that the defendant *“refused to be held accountable for his actions and that he continued to blame others for his actions”*. The issue of remorse will be further examined later on in this judgment.

Plea in Mitigation

- [12] Defence Counsel referred the Court to the Social Inquiry Report and highlighted the fact that the defendant was somewhat “slow”, prone to following individuals and being easily led. In his written submissions Counsel pointed out the age of the defendant at the time the offence occurred, being twenty two (22) years of age. He also alluded to the fact that the defendant’s father had died early in the defendant’s life which necessitated his mother moving from St. Kitts to Antigua and Barbuda. Counsel pointed out that these issues resulted in the defendant being bereft of a social structure. Counsel also drew the Court’s attention to the fact that the defendant is illiterate and that this would have facilitated his behaviour of following the crowd.

Victim Impact Statement

- [13] Victim Impact Statements were obtained from Mr. Toni Karan a nephew of the deceased another individual who identified as a close friend of the deceased in Syria and also here in Antigua. Both shared that they both were born in Syria and immigrated to Antigua as did the deceased. They shared that the deceased had all intentions to return to his homeland Syria but he was killed before he could achieve his dream. The deceased was not married and had no children but had been communicating with a lady at the time of his death and intended to wed in the future. It is not clear from the report whether the lady was in Antigua or Syria nor how his untimely death has affected her. The interviewees further shared that the family in Syria was very close knit. The family has undoubtedly suffered from the untimely death of the deceased; having to seek medical care to deal with the impact. The family was further impacted by the fact that they were forced to mourn the loss of Mr. Daher without having his body as it would have cost too much and take three months to transport the remains to Syria. The incident took place in 2016 and the deceased grandmother died in 2019 without having the benefit of her grandson’s remains. The nephew also shared that the deceased was her favourite grandson.
- [14] It is obvious to this Court that the deceased meant a great deal to his family and having him ripped away from them has had a devastating effect on them.

Aggravating and Mitigating Factors

Aggravating Factors

- [15] The Court found the following:-

Offence

- (i) It was a premeditated robbery;
- (ii) The killing was committed in the course of a robbery;
- (iii) A firearm was used;
- (iv) The firearm was not recovered;
- (v) The prevalence of offences involving stealing;

Offender

Corey Mills

- i. He was armed with a firearm and shot the deceased

Mitigating Offence

Offence

[16] There are no mitigating factors in relation to the offence.

Offender

Corey Mills

- I. He was a young man, aged 22 at the time of the offence;
- II. The defendant is of low intellectual ability and is illiterate¹;
- III. He is a first time offender
- IV. Father of a minor child
- V. He was under the influence of cocaine at the time of the commission of the offence;
- VI. Remorse (indicated in the social inquiry report but contradicted by the psychiatric report. The Court will however reconcile this in the favour of the defendant)

[17] This defendant would be entitled to his full discount for his guilty plea at the earliest opportunity

The Law and Precedents

Murder

[18] The sentence for the offence of murder is governed by the **Offences Against the Person (Amendment) Act, 2013**:

Section 3 provides:

¹ In the case of R vs Hunte et al 2015/0079 Morley J took the illiteracy of the defendant into consideration as a mitigating factors.

Section 2 of the principal Act is repealed and the following substituted –

“2. Whosoever is convicted of murder shall be sentenced to death or to imprisonment for life or for such lesser term as the court considers appropriate.”

Section 6 further makes provision for the inclusion of a review period in any sentence imposed:

(1) Where a person is convicted of any offences under Part I and II of this Act and sentenced to life imprisonment or to a lesser period of imprisonment, the court may order that the sentence imposed on the convicted person be reviewed by a court of competent jurisdiction after the person has served not less than a period of –

(a) thirty years where the sentence is life imprisonment, and thereafter at intervals of five years; and

(b) twenty years, in the case of a lesser term of imprisonment, and thereafter at intervals of three years.

[19] While the section has sought to create a mandatory minimum sentence, the Court of Appeal in the case of **Thelbert Edwards vs The Queen Criminal Appeal No 3 of 2006**, has found such provisions to be unconstitutional. Accordingly, the Court has a discretion as to the sentence to be imposed given to particular circumstances of the case.

[20] The Crown helpfully submitted local authorities for consideration, where persons entered pleas of guilty to murder.

[21] **The Queen vs Shawnoy Anthony [ANUHCR2016/0114] (unreported)**, in this case, the defendant and the deceased had been very good friends. A few weeks before the fateful night, the two had a disagreement concerning a debt owed by the deceased to the defendant. The deceased though was of the view that the debt was settled given that he had done some auto repair work for the defendant without charge. Despite several persons, including the mother of deceased assuring the defendant that he would be repaid his three hundred and fifty dollars (\$350), he was not satisfied. On the night in question, the deceased was standing by the door to his apartment speaking to a friend when the defendant ran up and shot him once to the chest fatally injuring him. The defendant fled the scene but had been seen by the deceased's friend who was able to identify him. The defendant was twenty nine (29) years old and had no previous convictions at the time of the incident. The deceased was thirty two (32) years old. On 20th February, 2018 after the sole eyewitness had given his evidence, the defendant entered a plea of guilty to murder. He was sentenced on the 18th May, 2018 to twenty five (25) years imprisonment.

[22] **The Queen vs Sylvester Lindsay [ANUHCR2011/0049]**, in that case, in an attempted robbery, the defendant shot and killed an Australian tourist on the street in English Harbour. He had shot the deceased twice and the bullets had exited his body. The defendant was twenty one (21) years

old with no previous convictions at the time of the offence. He was sentenced on 3rd February, 2012 to serve twenty two (22) years imprisonment with the three (3) years he had spent on remand awaiting trial being credited.

- [23] **The Queen vs Trevor Boston and Antonio Smith [ANUHCR2011/0094]**, the two defendants were friends who set out at about 9:00 a.m. on the day in question to break into the home of the deceased and steal money and other valuable property. The deceased, a fisherman, lived with his twin brother and his sister-in-law. The defendants had information that no one was to be home at that time of the morning. The defendant Boston went into the home while Smith acted as the lookout. Boston had gone into the house armed with a firearm which Smith had knowledge of. When Boston went into the house, he was confronted by the deceased and he drew the firearm. A struggle ensued and he shot the deceased and the two defendants fled the scene. The deceased ran out into the road for help and there he succumbed to his injuries. The defendant Boston was aged twenty two (22) and Smith was twenty six (26) at the time of the offence. Both had no previous convictions at the time of the offence. The defendant Boston was sentenced to twenty (20) years imprisonment and Smith was sentenced to the time of seven (7) years spent on remand which is equivalent to a ten and a half (10½) years sentence. The Court of Appeal subsequently in 2019 reduced Boston's sentence to eighteen (18) years imprisonment due to the fact that the judge had counted an aggravating factor twice.

Defence Submissions

- [24] Defence Counsel in his submissions has asked the Court to consider that a thirty (30) year starting point in this case would be inappropriate. He submits that while the defendant was in possession of and used a deadly weapon in the commission of the robbery the intention to seriously harm was absent. In addition to this, Counsel submits that the intention was absent due to Mills being under the influence of drugs. Counsel further submitted that the defendant's intention would have been reckless towards the real risk of harm, as he was told to shoot the gun by his co-accused Ian Daniels. Counsel urged the Court to use twenty five (25) years as the starting point based on the circumstances of the case.
- [25] Counsel also reiterated that the Court should be mindful of the fact that the robbery was not planned by the defendant but by Ian Daniels his codefendant (who entered a plea of guilty to manslaughter). Counsel helpfully referred the Court to two (2) cases within the Eastern Caribbean Supreme Court jurisdiction which he submitted would be analogous to the defendant's position in the case at bar.
- [26] The cases of **The Queen vs Keon Edwards BVI Criminal Case No. 7 of 2009** and **Theodore Horsford Antigua and Barbuda Criminal Case 2008/0010** both involved the use of a firearm. In the **Keon Edwards** case the defendant was sentenced to twenty years (20) and Mr. Horsford for eighteen (18) years. Counsel pointed out that while these sentences are at the higher end of the scale, they

are distinguishable, as with Theodore Horsford, the defendant was found guilty by a jury, for the fatal shooting and would have lost the credit which would have been given to a defendant had he not gone to trial. Furthermore, Mr. Horsford fired more than one (1) shot, and he had antecedents. He also referred the Court to a list of authorities which will be discussed below.

The Defence's Authorities

- [27] In the case of **The Queen vs Umberto Shenato**² Justice Ramdhani held that *"in considering this matter in the round, taking into consideration both the offence and the offender an appropriate term is a fixed term of imprisonment of twenty (20) years with a minimum period of fourteen (14) years"*. Notably in that case the defendant was found guilty after a jury trial of the murder of his ex-wife.
- [28] In the **Queen vs Steve Urlings Jnr**³, the defendant was found guilty after a jury trial of murder. In that case Morley J held that a minimum sentence of forty (40) years was to be reduced to thirty (30) years due to the difficult conditions at the local prison. He went on to say *"The prison is called 1735 as that is when it was first used for custody. The facilities appear to date back to the 19th century more in keeping with 1867, 150 years ago rather than 2017. Facilities are rudimentary. The prison is overcrowded⁴. Convicted prisoners were in small cells and allowed out only during day light hours. There is potential for the spread of disease"*. Although defence counsel has not urged that the conditions at the prison be taken into account, the Court cannot ignore the situation at '1735' and it will have a small bearing on the final sentence to be imposed.
- [29] In the case of **The Queen vs Jean Fontinelle**⁵ the defendant entered a guilty plea to murder. In that case the defendant was sentenced to twenty five (25) years after a thirty (30) year starting point was decided on as the notional sentence.

Court's Considerations and Reasoning

Starting Point

² Criminal Case ANU 41 of 2015

³ Criminal Case ANU 122 of 2015

⁴ With the current Covid-19 conditions, the situation is even more dire.

⁵ SLUHR2011/1679

[30] Having regard to the authorities provided by the Crown and by defence counsel, the Court does not consider that the facts and circumstances of this case fall into the category of whole life sentence⁶.

[31] The Court has availed itself of the draft **Eastern Caribbean Supreme Court Sentencing Guidelines for Murder**. Having regard to the circumstances of the case, the authorities placed for consideration by the Crown and defence counsel and the circumstances of the defendant, the Court is of the view that this defendant is to be sentenced to a determinate sentence⁷.

[32] The Court has determined that this was a brutal and unnecessary murder. The victim was a business man who had left his home country of Syria to come to Antigua and Barbuda for a better way of life. He embarked on a business venture running the restaurant in St Johns. He was killed and robbed. Although the defendant has down played his role in this sordid story, he is the one pulled the trigger killing the deceased and that action must be reflected in the sentence.

[33] The starting point will be twenty seven (27) years. This will be adjusted upwards to taken into account the aggravating factors:-

- (i) It was a premeditated robbery;
- (ii) The killing was committed in the course of a robbery;
- (iii) A firearm was used;
- (iv) The firearm was not recovered;
- (v) The prevalence of offences involving stealing and gun violence

[34] This will bring the figure to thirty three (33) years. This figure will be adjusted downwards to take into account the mitigating factors as set out in paragraph fourteen (14) of this decision. The mitigating factors are as follows:-

He was a young man, aged 22

- I. The defendant is of low intellectual ability and is illiterate⁸
- II. He is a first time offender
- III. Father of a minor child
- IV. He was under the influence of cocaine at the time of the commission of the offence

⁶ To be passed where the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high, and the offender was aged 18 or over when he committed the offence

⁷ In the case of R vs Eldon Charles 2017/0025 by way of mitigation, Counsel Okola recognized his only mitigation was that Charles had pleaded guilty. Accepting Charles could be a candidate for a life sentence, without parole, if convicted by a jury, he pressed the argument that the plea ought to reduce the sentence to something determinate.

⁸ In the case of R vs Hunte et al 2015/0079 Morley J took the illiteracy of the defendant into consideration as a mitigating factor.

V. Remorse (indicated in the social inquiry report but contradicted by the psychiatric report. The Court will however reconcile this in the favour of the defendant)

- [35] The downward adjustment will be by five (5) years. A further two (2) years will be deducted to take into account the deplorable conditions at the local prison. This will bring the sentence to twenty six (26) years.
- [36] The defendant entered a guilty plea and so he will be given his full one third (1/3) discount. The one third will amount to eight (8) years and six (6) months or one hundred and two (102) months. Taking off the one third (1/3) from that figure brings the sentence to three hundred and ten months (310) months or twenty five (25) years and eight (8) months.
- [37] The defendant has been in custody since 2016 which is four (4) years thus bringing the sentence to twenty one (21) years.
- [38] The sentence is to take effect from the date the defendant was first taken into custody.
- [39] The defendant is to serve ten (10) years before sentence is reviewed.
- [40] In considering ancillary orders, while in prison the defendant is to enroll in academic remedial classes in addition to general counseling to assist in his rehabilitation.
- [41] The Court is grateful to the Director of Public Prosecutions (DPP) and learned Counsel for the defendant for the tremendous assistance afforded by their submissions and case law provided.

Ann-Marie Smith
High Court Judge