

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

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

CASE NO. ANUHCR 2019/0032

BETWEEN:

THE QUEEN

Vs.

TIMOTHY JACKMAN

Defendant

Appearances:

Ms. Rylis Adams Counsel for The Crown

Mr. Michael Archibald Counsel for the Defendant

2020: July 15th

Headnotes: Guilty plea to manslaughter-sentencing-early guilty plea-time spent on remand-special circumstances of the defendant-mitigating factor.

JUDGMENT

- [1] **SMITH, J.:** The defendant, Timothy Jackman was charged on an indictment containing a single count of murder arising from an incident occurring on the 29th of August 2018, where he stabbed the deceased, Fitzroy Hanif Joseph aka Angel in her neck causing her death.
- [2] Although the deceased was born male (s)he preferred to be referred to as female. As a result this Court will respect her wishes and will refer to the deceased using feminine pronouns.
- [3] Both parties were involved in an intimate relationship which was tumultuous from all accounts.

- [4] The defendant was aged 20 at the time of the offence and the deceased was 25 years old.
- [5] The defendant entered a plea of guilty to manslaughter and this was accepted by the Crown. As a result of the guilty plea to manslaughter a Social Inquiry Report was ordered. This report was prepared by Mrs. Desiree Weston-Williams and will be referred to later on in these sentencing remarks.

Background Facts

- [6] The defendant and the deceased were introduced to each other and began a romantic relationship in 2016. Those who were familiar with them acknowledged the relationship to be volatile and filled with arguments and fights. Friends and family of the deceased stated that they had seen her with various markings about her body suggestive of physical altercations with the defendant. Similarly, the defendant's brother indicated in his deposition to the Magistrates' Court of seeing him with marks and bruises about the face suggestive of physical altercations with the deceased.
- [7] The Social Inquiry Report also alluded to the defendant having marks on his body. When interviewed by the author of the report he indicated that the marks were caused by the deceased.
- [8] In the days leading up to the 29th of August 2018, the fighting and quarreling grew more frequent. A neighbour, Shem Matthew in his deposition to the Magistrates' Court indicated that the pair lived above him and he would hear arguments and 'foot stamps' on a regular basis. He stated that "the boy's mouth (referring to the Defendant) is very big, he has a big voice". He observed that the "other one (the girl) seemed cool and calm. They would curse one another but you mostly hear the guy's voice cursing the other one with indecent and abusive language". He also deposed to hearing the defendant telling the deceased "if you don't leave the house you will be dead".
- [9] On the date that the deceased was killed, 29th August 2018, another neighbour Lewisan Mathews said in her deposition to the lower Court that she observed her (the deceased) packing up her belongings in preparation to leave the apartment that she shared with the defendant. Lewisan Matthew indicated that she too would hear the two parties quarreling and fighting (they lived in the apartment above hers and her husband's). Prior to the killing she said she heard the defendant tell the deceased "you tek up knife to kill me? Today is the last day of my life? I want you to move out because if you don't move out I will kill you."
- [10] She said that at about 7:30 a.m. on the date in question, she heard what she described as a "commotion" coming from the apartment above her. She recalled hearing what sounded like things being thrown on the ground.
- [11] At around 9:50 a.m. another witness, Karen Andrew indicated that she observed the deceased moving garbage bags from the apartment to a van, which was waiting outside. She said in her deposition that she observed the deceased saying something to the defendant and he was observed pulling her (the deceased) into the apartment.
- [12] The defendant was seen leaving the apartment some twenty (20) minutes later.

- [13] The witness Karen Andrew, who owns a nail salon nearby, indicated that the defendant was seen entering the van which was parked downstairs and driven by Wensworth King. This witness deposed that the defendant looked frightened. The driver of the van deposed that the defendant told him (King) "I just kill Angel" and then told him he was going to turn himself into the police and asked for a ride to the said police station.
- [14] Shortly after, the defendant and the driver left the scene for the station but returned a short time later as the defendant reported that he had forgotten his cell phone at the apartment. The defendant went upstairs and the driver unloaded the deceased belongings and left.
- [15] The defendant returned downstairs and went to Karen Andrew's nail shop and asked her for a ride to the police station. He told her he had killed the deceased. Ms. Andrew took him to the police station.
- [16] At the police station he met S/Sgt Elvin who described him as appearing "frustrated and hardly wanted to talk". He also noted that the convict seemed like he was "in a fight or an accident." The defendant told the police that he had killed his girlfriend with a knife. He was then arrested and taken into custody.
- [17] An autopsy was performed on the deceased which concluded she died from 'exsanguination due to puncture wound to right jugular vein' meaning that the deceased died from severe blood loss caused by the stab wound to her neck.

The Social Inquiry Report

Special Circumstances of the Defendant

- [18] The report disclosed that the defendant was raised in humble circumstances by his deceased mother with no father in the home. The report also disclosed that the defendant indicated that his life was filled with pain and shared that on one occasion when he was living with his brother in Buckley's Village, that he was sexually molested by a male neighbour when he was eleven (11) years old. He told the author of the report that he felt ashamed about the incident especially whenever he would encounter the alleged molester. The defendant revealed that this "traumatic event repeatedly invaded his thoughts; however, he said tried his utmost best to avoid thinking about it".
- [19] The report also set out how the death of the defendant's mother, when he was aged seventeen (17) affected him negatively. His brother when interviewed observed that the defendant was devastated when their mother died. He added that he enjoyed a very close and warm relationship with the defendant.
- [20] The social consequences of these factors as set out above are for those skilled in behavioral issues such as psychiatrists. However, it suffices to say that the defendant was exposed to

sexual violence from an early age and this may have contributed to his aggression towards the deceased.

The Relationship Between the Defendant and the Deceased

- [21] As already indicated in paragraph one (1) of these sentencing remarks, the defendant was originally indicted for murder and subsequently entered a plea of guilty to manslaughter.
- [22] In the report the defendant stated to the author that he never intended to harm the deceased and that the killing was an accident. He also stated this to the police and to the neighbour who transported him to the police station. However, he indicated that the relationship between them was volatile accusing Angel of being very jealous and controlling. He shared that he could not have any friends, could not use Facebook and his every move was monitored. According to the defendant during the relationship he had to go straight home from work. He continued that he suffered tremendous abuse at the hands of the deceased. The defendant recounted that on one occasion in 2016 or 2017 he made a report to the police station after he was stabbed in the neck and chest and had to be treated at the hospital. The defendant showed the author of the report marks on various parts of his body, which he alleged were inflicted by the deceased. This account is at variance with the account of the mother of the deceased who said that it was the defendant who was aggressive and abusive.

Police Interview

- [23] During his interview with the police, the defendant gave his version of events. He indicated that the deceased had already packed up all of her things and had started carrying them outside and came back inside and an argument began. He stated that during the argument the deceased grabbed a knife and a struggle ensued. He said he took the knife and stabbed her because he believed she would stab him. The defendant told the police that once he got the knife from the deceased, she 'thump' (sic) him in his belly and that was when he fired a "wild stab" at her. The stab landed in the deceased's neck. The defendant also told the police that he had no intention to kill the deceased and that the argument started because the defendant told the deceased she needed to leave.

Nature of the Offence and the Manner of Execution

- [24] As already indicated, the defendant entered a plea of guilty to manslaughter which is the taking of the life of another. In looking at the manner of execution of the offence the Court is guided by extracts from the Post Mortem Report prepared by pathologist Dr. Lester Simon. In The report the pathologist indicated that he performed an autopsy on the deceased on 12th September, 2018. He noted that there was a single puncture wound to right neck 3.5x1.1 cm lacerating the right jugular vein and extending downwards into the right pleural cavity with 400 mls haemothorax. The doctor

found that death was due to exsanguination to right jugular vein. The deceased was aged twenty five (25) at the time of her death.

Victim Impact Statement

- [25] The mother of the deceased was interviewed by the probation officer and her comments were included in the Social Inquiry Report. The mother described the deceased as being a loving person but as a result of her child's sexuality they had disagreements. However despite this issue they still communicated and had a good relationship. The mother further corroborated other persons spoken to by the author of the report of the volatile relationship between the deceased and the defendant. She stated further that she too had observed marks on the deceased skin which she attributed to the defendant. Despite the defendant killing her child she indicated that she felt no ill will towards him and that he had asked for her forgiveness when they had met in court.

Plea in Mitigation

- [26] Defence Counsel in his plea in mitigation pointed out the age of his client at the time the offence was committed and the fact that he entered an early guilty plea. He noted that the incident arose out of a relationship between the parties which by all indications was a relationship fraught with difficulties. Counsel pointed the Court to the special circumstance of the defendant's being a victim of sexual abuse and the fact that his mother died while he was relatively young. Counsel also pointed out that the defendant did not mean to stab the deceased and that they were engaged in a fight when the fatal blow was rendered. In his plea in mitigation Counsel reminded the Court that the defendant has no previous convictions for violence and that members of the community spoke of his quiet and gentle nature. He also pointed out that the defendant was a victim of sexual abuse as a young child and that this should be deemed a mitigating factor.

Principles of Sentencing

- [27] Every Judicial Officer tasked with sentencing must have the principles of sentencing upper most in his or her mind. These principles of sentencing are retribution, deterrence, reformation and protection of society. These are applied by the Court in calibrating an appropriate sentence in the particular case. It is to be noted further that the protection of society may be said to be the end result.
- [28] These principles have been applied by the Courts in England from 1974¹ and by our Courts from 2003 as evidenced by the reasoning of Byron CJ, as he then was. The 2003 case of

¹ (1974) 60 Cr App R 74

Desmond Baptiste et al vs The Queen² sets out the reasoning of Sir Dennis and the guidelines to utilize in sentencing. The principles of sentencing are as follows:-

Deterrence - is general as well as specific in nature. The former is intended to be a restraint against potential criminal activity by others whereas the latter is a restraint against the particular criminal relapsing into recidivist behaviour. Of what value however are sentences that are grounded in deterrence? Specific deterrence may be an ineffective tool to combat criminal behaviour that is spontaneous or spawned by circumstances such as addictions or necessity. Drug and alcohol addiction as well trigger a high rate of recidivism. Experience shows that general deterrence too is of limited affect. These sentences tend to lose their potency with the passage of time. In the case currently before the Court, the fact that the defendant has no previous convictions for violence leads me to the view that my sentence will not need to act as deterrence for him. It will however act as deterrence for others who fly into blind rages and use weapons to inflict harm.

Prevention-the goal here is to protect society from those who persist in high rates of criminality. For some offenders, the sound of the shutting an iron cell door may have a deterrent effect. Some however, never learn lesson from their incarceration and the only way of curbing their criminality is through protracted sentences whose objective is to keep them away from society. Such sentences are set to repeat offenders. As stated above there is no need to impose a sentence that will prevent this defendant from committing likeminded offences.

Rehabilitation - the objective here is to engage the prisoner in activities that would assist him with reintegration into society after prison. However, the success of those aspects of sentencing is influenced by executive policy. Furthermore, rehabilitation has in the past yielded mixed results. Of course sentencing ought not to be influenced by executive policy such as the availability of structured activities to facilitate reform. In applying this principle to the defendant there is no doubt in the Courts mind that he can benefit from intensive counseling to deal with his anger issues, aggression, grief and the traumatic events of his childhood. This counseling would go a long way in assisting him in reintegrating with society and provide him with the skills and tools to deal with conflicts and trauma.

Retribution - through this aspect of sentencing the Court reflects society's intolerance for the defendant's criminal conduct. The society must see that the defendant has been punished for the taking of Angel's life. The taking of any life is intolerable but there is no doubt that transgender persons are particularly vulnerable and often find themselves in abusive relationships. Nothing justifies the taking of Angel's life in this horrific manner and the sentence to be imposed must reflect this.

[29] In addition to the above, the Court must also bear in mind that at the time of the commission of the offence, the defendant was only twenty (20) years old. Sir Dennis Byron had this to say about youthful offenders in **Baptiste**:

² St Vincent and The Grenadines, Criminal Appeal 8 of 2003

"On the issue of age of the offender, a sentencer should be mindful of the general undesirability of imprisoning young first offenders. For such offenders the Court should take care to consider the prospects of rehabilitation and accordingly give increased weight to such prospects. Where imprisonment is required, the duration of incarceration should take such factors into account. In the same vein, in cases where the offender is a mature individual with no apparent propensity for commission of the offence, the sentencer may also take this circumstance into account in weighing the desirability and duration of prison sentence. As with first time offenders the more serious the offence the less relevant will these circumstances be."

In the case at Bar the Court found the following Aggravating and Mitigating Factors

Aggravating Factors

Offence

- I. The defendant killed the deceased using a weapon (knife). He ought to have foreseen the consequences of his act and he is indeed a lucky man not to be before the Court for murder.
- II. There is no evidence that the defendant rendered any assistance to the deceased.
- III. The offence took place at the home both shared and where the deceased was entitled to feel safe.

Aggravating Factors

Offender

[30] The Court found no aggravating factors in relation to the offender.

Mitigating Factors

Offence

[31] The Court found no mitigating factors in relation to the offence.

Offender

- I. The defendant was a victim of sexual abuse as a child;
- II. Has no previous convictions for violence;
- III. Showed remorse and apologized to the mother of the deceased;

- IV. Turned himself in to the police immediately and entered an early guilty plea;
- V. His age at the time of the commission of the offence was twenty (20) years old.

Sentencing for Manslaughter

[32] The sentencing for manslaughter has been described by my learned sister Judge Ellis J in the case of **R vs. Alberto Rosa de la Rosa**³ emanating from the BVI as being “notoriously difficult”. She went on to say: -

“However, notwithstanding the notorious difficulties the dearth of sentencing authorities assists the courts and we have sentenced individuals convicted for manslaughter by unlawful act. What the authorities have demonstrated is that there are ranges of culpability in manslaughter by dangerous act. What is also clear is that where there is evidence that the deceased had been aggressive or violent to the defendant this may be sufficient to place the manslaughter at the lower level of the scale of seriousness. In the case of **R vs. MD** the Court observed that: in many cases where an offender is convicted of manslaughter there will be exculpatory matters and personal circumstance that can lead the Court to significantly ameliorate the sentence which might otherwise be imposed”.

[33] However it is also open to a sentencing judge where a defendant utilizes an inappropriate or excessive response to aggression to find that the manslaughter falls in the serious category. Therefore offences involving a weapon will generally attract sentences at the higher end of the range.

Local Authorities

[34] The Crown has helpfully supplied to Court with local authorities for the Court’s consideration.

[35] The first case to consider is **The Queen vs. Damien O’Garro ANUHCR No. 11 7 of 2011**. In that case the deceased was stabbed twice by the defendant and died as a result of blood loss due to a laceration to the spleen. The defendant stated that an argument arose as it related to negotiated payment for sex. The defendant did not have the money at hand and the deceased became angry. According to the defendant, the deceased pulled a knife on him and he disarmed her and stabbed wildly. The defendant denied the accusation when it was first put to him but later, in his police statement, detailed what occurred. The defendant entered a guilty plea to manslaughter and was sentenced to seven (7) years imprisonment. At the time of the offence, the defendant was twenty-one (21) years old.

[36] In the case of **The Queen vs. Marco Diedrick ANUHCR No. 103 of 2014**, the deceased died as a result of strangulation. The defendant told the police that during the course of an argument, the deceased continued hitting him and so he (the defendant) wrapped his hands around the deceased’s neck and “choked” him to get him under control. He entered a plea of guilty to

³ BVIHCR 22 of 2014

manslaughter and was sentenced to seven (7) years imprisonment. At the time of the offence, the defendant was thirty four (34) years old. It is acknowledged that the defendant in this case, unlike the others, did not inflict a stab wound. However, it should be noted that the death came about during a fight/struggle. It is believed that this is a commonality with the case currently under consideration.

- [37] In the case of **The Queen vs Devon Byam ANUHCR No. 113 of 2011**, the deceased was stabbed three times and died as a result of a haemothorax caused by a wound to his heart. The defendant told the police that the stabbing occurred as a result of an argument about a bicycle. The defendant said the deceased hit him while they were scuffling and he (the defendant) grabbed the knife "out of reflex" and stabbed him out of "frustration." He entered a plea of guilty to manslaughter and was sentenced to fourteen (14) years imprisonment. At the time of the offence, the defendant was forty-six (46) years old.
- [38] The **Queen vs Queisha Geiger ANUHCR No. 16 of 2007**, involved two school girls. In this case, the deceased died as a result of hemorrhage of the lung and heart due to a single stab wound to the left of her chest. The defendant told the police that she and the deceased were former friends and had an argument at school which spilled over after school while they were on their way home. A fight took place where the convict pulled a knife from her school uniform and brandished it. The deceased was able to disarm her but the convict regained possession of the knife and stabbed the deceased. She entered a plea guilty to manslaughter and was sentenced to five (5) years imprisonment. At the time of the offence, she was fifteen (15) years old.

Regional Authorities

- [39] The Eastern Caribbean has set a benchmark of fifteen (15) years for manslaughter cases. Naturally, this has been varied in order to address the myriad of circumstances that have arisen and which must be taken into account as well as the sentencing guidelines currently being drafted.
- [40] In actual fact the sentences for manslaughter in the region have reached as high as twenty five (25) years in the case of **Kenneth Samuel vs. The Queen**⁴ which involved a dispute over (ten) \$10.00 resulting in death, a charge of murder and a guilty plea to manslaughter.
- [41] In the case of **The State vs. Donald Massicott DOMHCR2014/ 0039**, the defendant killed his uncle with an axe while he slept. He entered a plea of guilty to manslaughter which was accepted by the State. The Court accordingly used the benchmark of a nominal sentence fixed twelve (12) years and reduced by one third (1/3) for the guilty plea. The defendant was sentenced to eight (8) years imprisonment. Time on remand counted towards the sentence. The Court also ordered that the defendant receive psychiatric counseling and/or treatment.
- [42] In **Denis Alphonse vs. The Queen**⁵ and **James Baptiste vs. The Queen**⁶ both defendants were found guilty of murder by their respective juries. On appeal, their convictions for murder were

⁴ St Vincent and the Grenadines Criminal Appeal number 7 of 2005

⁵ St Lucia Criminal Appeal number 1 of 1995

quashed and a conviction of manslaughter entered. A sentence of fifteen (15) years imprisonment was substituted in each case.

Construction of the Sentence

- [43] The draft sentencing guidelines on manslaughter have not yet been evolved, however I am guided by the authorities from the Eastern Caribbean Supreme Court and in particular where the Court of Appeal has approved a starting point of fifteen (15) years for manslaughter which can be adjusted upwards and downwards with regard to the mitigating and aggravating factors of the case. In this case the Court finds that the fifteen (15) year benchmark is an appropriate starting point.
- [44] The starting point will be adjusted downwards to take into account the mitigating factors as set out in paragraph 31 of this decision namely:-
- I. The Defendant was a victim of sexual abuse as a child;
 - II. Has no previous convictions for violence;
 - III. Showed remorse and apologized to the deceased mother (evidenced by the impact statement of the mother);
 - IV. Turned himself in to the police immediately and entered an early guilty plea;
 - V. His age at the time of the offence being twenty (20) years of age.
- [45] The fifteen (15) year starting point will be adjusted downwards by four (4) years to eleven (11) years and upward to take into account the aggravating factors which bring us back to fourteen (14) years (or 168 months). The early guilty plea will result in a one third (1/3) reduction in the sentence which is fifty (56) months to be taken off the one hundred and sixty eight months (168) which brings my calculations to one hundred and twelve (112) months or eleven (11) years and nine (9) months.
- [46] The defendant has been in custody since 29th August, 2018 and so the sentence is to take effect from the date he was first taken into custody thus being deducted from the sentence.
- [47] Considering ancillary orders the Court orders that Mr. Jackman receives counseling and treatment for his anger and the trauma experienced as a child including grief counseling. The Court is convinced that the defendant did not adequately grieve the death of his mother which occurred while he was young.
- [48] Mr. Jackman please stand up. You are sentenced to eleven (11) years and (9) nine months for the manslaughter of Angel Joseph.

⁶ St Lucia Criminal Appeal number 10 of 1994

Ann-Marie Smith
High Court Judge