

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON ANTIGUA

CASE ANUHCR2017/0025

REGINA

V

ELTON CHARLES

APPEARANCES

Ms Rashida Jonas for the Crown.

Mr Andrew Okola for the defendant.

2019: MAY 14

SENTENCE

On a plea of guilty to murder with a cutlass

- 1 **Morley J:** Elton 'Chalice' Charles, aged 43 (dob 07.12.75) falls to be sentenced following a plea of guilty on 15.04.19 to the murder in Parham of Urcil 'Sheik' Martin¹ on 04.05.15. Charles has a minor mental health history and a previous conviction in 2011 for wounding with intent.
- 2 Elton Charles has made his living selling fruits, supplementing his income working as a landscaper and mowing lawns. His fruit selling has led him into conflict with others who have thought he takes their fruit, and who he accuses likewise. In particular, he believed that the

¹ To be referred to generally as Charles and Urcil for ease of reading, with no disrespect intended by not writing out full names or titles, or the legalese of whether the defendant, convict, deceased, or aggrieved.

deceased Urcil Martin had stolen often from him. His neighbour Velma Nickeo recalls Charles on 02.05.15 sharpening his cutlass (a farming machete), saying it was *'fu kill all the informer and them'* and that he would like a *'ton of gun to shoot down all the informer'*. At about 5pm on 04.05.15, Trecia Martin was in her home with Urcil, her partner of 27 years. Hearing a noise, she went into the living room where she found Charles, who swung the cutlass at her head. She retreated to the bedroom. Charles could be heard chopping at the door. Urcil got out of bed. Charles broke in. Urcil protected Trecia as Charles advanced, and she broke through some louvres to escape the house. Charles chopped at Urcil, pursuing him through the home to outside where he collapsed, and various neighbours saw Charles standing over him, *'firing chops'* all over his body, like he was *'chopping wood'*. Leaving the scene, Bernadette Lee heard Charles saying *'me tell aryo na fuck around me, me go fuck aryo up'*. Charles later handed himself in to police, realising he would be wanted and could not hide out.

- 3 Urcil was pronounced dead at the scene. Post mortem examination revealed 13 deep wounds. The left forearm was amputated. Three fingers were amputated from the left hand. The right forearm was partially amputated. Through the right shoulder socket there was arterial severance. Four wounds had penetrated the skull, from two of which brain tissue was herniating. Death arose from exsanguination, skull fractures and brain injury. From these appalling injuries, there being so many of them, it is clear Charles intended to kill Urcil.

- 4 In interview on 05.05.15, in his statement under caution Charles said he sharpened the cutlass with juice, went to Urcil's home, climbed through a window into it, confronted Trecia, went into the bedroom, began chopping at Urcil, who received defensive injuries to his hands, he jumped out the window, Charles followed, and he added:

'He drop ah ground little in front of me, and they ah way me just start chop he, so pon he back he get couple chop well, hand, head, shoulder. So they ah ay he turn over pon he belly and he just finish off. The last chop he get in ah de head and he head just open and he just breathe off. Me just walk way left he and me go bush.'

- 5 In further Q&A, on 06.05.15, he described Urcil as a *'lousy dog...every time me see his face he just bad-minded toward me'*. He said he used to have a farm, and Urcil had destroyed his crop,

so he moved into the village. There had been arguments between them where Charles accused him of stealing, which Urcil strenuously denied. Asked why he had taken up his cutlass against Urcil, he said: *'...the night before and a couple of other nights me just can't sleep, disturbing vibes, seeing Sheik [Urcil] and hearing his voice, so me just tell meself me nah spend another night uncomfortable with them people, so me just say me go deal with he case.'* He said it was his intention to kill him. He was not on medication or drunk or on marijuana. He was not sorry for what he did. Though he knew the law said he could not take a life, he said: *'Well the laws ah the country say that, but when you can't take certain things in life, when people ah wrong you and so, you just solve all your problems.'*

- 6 The case first came before me on 02.10.17, when Counsel John Fuller represented Charles, who at that time seemed to want to plead guilty to murder, but counsel was concerned he may be insane. Thereafter, in an effort to establish the status of Charles' mental health, it has been listed 30 times, (with counsel changing on 23.02.18 to Counsel Andrew Okola), on 05.10.17, 14.12.17, 08.02.18, 23.02.18, 02.03.18, 20.04.18, 04.05.18, 11.05.18, 18.06.18, 22.06.18, 30.07.18, 03.08.18, 02.10.18, 03.10.18, 26.10.18, 30.01.18, 02.11.18, 03.12.18, 07.12.18, 25.01.19, 29.01.19, 06.02.19, 08.02.19, 12.02.19, 13.02.19, 15.02.19, 01.03.19, 15.04.19, 01.05.19, and 08.05.19.
- 7 On 03.04.18, psychiatrist Dr Griffin Benjamin reported Charles has no major psychiatric illness, no signs of acute psychosis, and his behaviour and thoughts were well organised, without hallucination or delusion. He had inpatient treatment for two weeks in Clarevue hospital in 2010. However, *'he is fully in touch with the reality of his life situation and he does not suffer any neurological, psychological or neurocognitive illness that may impair his memory, judgment or mental competence'*. Charles has an isolated social circumstance, with *'limited family connectiveness'*. He gave a clear account of the killing, saying *'I went to his yard with a cutlass and there is where he got murdered....at the back of his head'*. He has expressed no regret or remorse, saying *'I will not say I have any feeling about him...he violated me too much...I will not say I keep any feeling about killing him'*.
- 8 Thereafter, Counsel Okola asked for inquiry into his personal circumstances to be done by the probation service, who eventually reported on 05.04.19, in a remarkable report by Probation

Officer Alvin Jarvis. Interviewing Charles, he wrote *'the defendant said he enjoyed a good relationship with most persons with the exception of the deceased. He described the deceased as a pest to this life who at one point attempted to destroy his house by fire and raided his ganja field...hence taking the deceased person's life was the only way of resolving the matter and get satisfaction. While describing the incident in graphic detail the defendant said that for every wound he inflicted on the deceased was for a 'wrong' he would have done. During his explanation it would appear that the defendant was enjoying the moment with a glib expression on his face and general mannerism. The defendant showed absolutely no remorse for his action then, nor in retrospect several years later, he maintained that the deceased was deserving of being killed, which was his clear intention to do at the time when he committed the offence. Admittedly, the defendant's actions were premeditated as he started sharpening the cutlass days in advance of the attack.'* Reporting on the view of the community about Charles, *'...it would appear the defendant is deeply despised by a very large percentage of the population within the Parham community...he is considered a menace...he is not welcome to return... he often displayed a violent and hostile disposition towards residents....he is known to enter person's premises without their permission...the defendant seriously injured another person who was admonishing him from trespassing onto his property...The mere mention of his name caused some residents to become agitated and hostile. Some appear to be literally afraid of him, while others vow to cause him serious injury or even death...Residents describe him as cold and deliberate in his behaviour and showing no consideration for others...In his world the defendant seems to think he is an authority figure who should not be challenged and anyone who challenges him will do so at their peril'*. Even Charles' mother Hyacinth Roberts reported to Officer Jarvis she evicted him, he showed no appreciation, he was severed from her life, he is normal with no history of psychiatric conditions, and she was of the view his actions were deliberate.

- 9 On 25.05.11, before Floyd J, for an offence of wounding with intent, he received two years imprisonment, which was time served on remand, plus probation, (and during which time on remand in 2010, as reported by Dr Benjamin, he was placed in Clarevue for two weeks).
- 10 During the sentencing hearing on 13.05.19, I heard from members of Urcil Martin's family: from his wife Trecia, and his daughters Traleja aged 23 and Tana aged 20, who tell me there are

other siblings, Dante, Crystal, Sanchez and Alicia². Urcil Martin would today have five grandchildren, but had only met one prior to his death. From the emotional outpouring, which had the prosecutor Ms Jonas in tears, it is clear he was a much loved father and husband.

- a. Trecia was overwhelmed he did not meet his grandchildren, that the children's father is no longer there, that Charles had killed without any feelings at all, witnessed by her, asking that Charles never be allowed onto the streets again where he might meet the grandchildren.
- b. Traleja saw her father's body in their yard, she has been trapped by the question why, has been in therapy, cannot accept her father's loss, challenging Charles he did not have to kill her father like that, as if an animal, crying he destroyed more than her father that day, but a whole family, he has no idea what he did, furious they had become homeless, describing how her mother has struggled so very hard to keep everyone together, while they cannot celebrate anything, and she expressed exasperation Charles seemed to be smiling in court.
- c. Tana also saw her father on the ground, he was her best friend, he had promised to be at her graduation, over which she collapsed forward in the witness box, she has a son who never met her father, she feels she cannot do anything anymore, she has been for a long time on medication for an anxiety disorder, she sometimes feels like she is losing her mind, is not the same person she was, is more aggressive, and she asks 'why did this happen to me', she feels so helpless, wanting to know why Charles did it, aware she will never be the same again.

11 Charles briefly had family in court, who had thought to speak for him, being his son Kayan, aged 21, with his mother, but both left discreetly after hearing the anguish of Urcil Martin's family, sensitive to being unable to come forward, acting diplomatically, there being a full public gallery, almost all crying, of family and friends of Urcil Martin.

12 During the address of Traleja, it did appear to the court Charles was smirking, and Counsel Okola went to the dock to instruct him as to how to behave. I make it plain I will ignore this behaviour, as it may be rooted in nervousness, rather than delight at the family's suffering, so that I will not consider it aggravating, though it did look so very much like it was.

² With apology for any misspelling of names.

- 13 By way of mitigation, Counsel Okola recognised 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. He pointed out there had been a time Charles and Urcil were friends, as Urcil was godfather to Kayan. Something had changed Charles. It was discussed whether his membership of the Rastafarian community may have led to him using too much cannabis, possibly with a high THC³ content, so that he has become paranoid, which just might explain his behaviour, bearing in mind he has no major psychiatric illness, when his actions cry out for an explanation. Others in the community wonder if he may have been possessed during an obeah ritual. While I do not consider obeah has any role in this case, in addition I cannot make any finding of fact the offence was caused by THC-induced paranoia as there is too little information. Though clear Charles is not seriously mentally ill, the root-cause of his actions may remain forever a mystery.

Constructing the sentence

- 14 As to the sentence for murder, under **s2 Offences against the Person Act** cap 300, passed first as long ago as 1873, the maximum penalty is capital punishment, though in this case is not sought by the Crown. I will not sentence Elton Charles to death.
- 15 I have chosen to be assisted in my approach to sentence by the approach taken to sentences for murder in the sister Common Law jurisdiction of England and Wales. Considering **schedule 21 Criminal Justice Act 2003**, under s5A for murder with a knife taken to the scene, such as a cutlass and as happened here, the starting point is a minimum term of 25 years (all of which is served). Under s10 it is an aggravating feature of the offence if there was a significant degree of planning or premeditation.
- 16 In constructing this sentence it needs to be explained that in England and Wales, for murder the sentence is termed 'mandatory life imprisonment', though the judge must set a 'minimum term' to be served before a defendant might begin to be considered for possible parole. However, there is no clearly regulated parole mechanism on Antigua, so that if 'life imprisonment' is

³ THC is 'tetrahydracannabinol', which is the principal psychoactive constituent of cannabis, and its abuse has been established to cause paranoia in some people. Eg, see University of Oxford: <http://www.ox.ac.uk/news/2014-07-16-how-cannabis-causes-paranoia>

- passed, this could be expected to mean a whole life term with no prospect of release. For determinate sentences, (ie sentences calculated as a specific number of years), there is on Antigua automatic remission of one-third for good behavior. I consider that, if I am to be assisted by the CJA 2003, I should take account of automatic remission, so as properly to calculate the equivalent here of a minimum term there.
- 17 Moreover, I have researched case precedent within the jurisdiction of the Eastern Caribbean Supreme Court. This shows that, absent capital punishment, I must decide between a sentence of life imprisonment, meaning Charles will not be considered for release, or a determinate sentence of a fixed number of years, of which Charles will serve two-thirds before being eligible for remission if of good behaviour.
- 18 Reflecting on the facts of this case, turning to the features pertaining to the offence, I note the intention was to kill, not merely to cause really serious harm, and so the sentence cannot be mitigated by a lesser intent. Further, I consider the offence was significantly premeditated, with the cutlass observed being sharpened two days before, so that the planning is a significantly aggravating factor. There is additionally the sheer savagery of the attack, leading to amputation of fingers and the left forearm, sustained until death was observed by Urcil breathing his last, and the fact it involved home invasion, climbing through a window into Urcil's home, and then breaking into his bedroom. I consider these features in combination increase the minimum term by 10 years to 35 years.
- 19 Turning to features pertaining to the defendant, I note there is not a shred of remorse, and the view in Officer Jarvis' report that in his world he seems to think he is an authority figure who should not be challenged. In addition, he has a highly relevant previous conviction, which discloses having had the *mens rea* for murder on an earlier occasion. These are aggravating features, increasing the minimum term further by 7 years, to 42 years.
- 20 Still reflecting on features pertaining to him, though he has been diagnosed as having no formal mental disorder, I am of the view he shows tendency toward being a sociopath, and is therefore dangerous. He is happy to disregard the law. The community is afraid of him. To be 'dangerous' means there is a significant risk of serious harm to members of the public by the commission of

further serious offences, so that the public may need to be protected from the offender. By this standard Charles is dangerous, meriting his sentence being extended to protect the public, as contemplated in **R v Desmond Baptiste 2004**⁴. I have reflected carefully on whether this dangerousness merits a life sentence, which assumes there is no possibility of release. If Charles had been convicted after a trial, a life sentence would have been to the front of my thinking. However, I must bear in mind that he has pleaded guilty, which attracts significant credit (which I will address shortly), and in these circumstances, following a plea a life sentence ought to be extremely rare, so that in this case I will not pass one, but instead a determinate sentence. However, owing to his dangerousness, within a determinate sentence, I increase the minimum term by 6 years to 48 years.

- 21 Such a minimum term is to be served in the local jail in St Johns. As I have observed when passing sentence for murder on *Errol Barnes* on 08.06.17, on *Steve Urlings* on 24.07.17, and on *Meryl Chiddick* on 15.04.19, I have visited the prison on Antigua, having done so annually, now three times in Decembers 2016, 2017, and 2018. The prison staff do excellent work in very difficult circumstances. The prison is called '1735', as that is when it was ground first used for custody. The facilities appear to date back to the 19th Century, more in keeping with 150 years ago, rather than the 21st century. Facilities are rudimentary. The prison is overcrowded. Remandees are often twelve to a cell with only six beds, allowed out often for only about six hours a day. Convicted prisoners in another sections of the prison are in small cells and allowed out only during daylight hours, (oddly for longer than the remandees who are unconvicted, innocent until proven guilty). In the overcrowding, there is potential for the spread of disease. There is an outside bank of toilets into a pit under corrugated iron, about 30m from the kitchens. During lockdown, urination and defecation are into plastic buckets, lacking any privacy and requiring morning slopping out. I consider these conditions to be far more difficult than in a UK prison, for which there minimum terms have been calculated, and consequently there should be a further reduction in the minimum term here to allow for the fact it is to be served in far harsher conditions.

⁴ See **Baptiste v Regina 2004 (St Vincent Criminal Appeal case 8 of 2003)**, para 24.

- 22 I assess these harsher conditions merit a reduction from a UK sentence of roughly, though not mathematically precisely, one-quarter, which for the purposes of this case will mean 12 years, so that the minimum term of 48 years to be served in '1735', is to be reduced 36 years.
- 23 Turning then to how to effect a minimum term of 36 years on Antigua, I take account of automatic remission, meaning that 36 years should be considered two-thirds of the sentence. This means that the correct sentence, to effect a minimum term of 36 years, is 54 years' imprisonment.
- 24 Thus, if there had been no plea, the sentence would today have been 54 years.
- 25 Turning now to plea, Charles has pleaded guilty. He intimated he wished to do so at an early stage, though this has been delayed by his diligent counsel who have set in place the relevant reports. The plea entered on 15.04.19 was shortly after Officer Jarvis' report finally was filed, and in that sense was at the earliest practical opportunity. He shall therefore be considered, as the court's initial approach, for full credit for plea. It is well-established throughout the Commonwealth, and specifically since 2015 on Antigua, following the **Practice Direction from the Chief Justice, no.1 of 2015**, on the early guilty plea scheme, which it is important the wider public should know, that a plea of guilty attracts a significant discount, for the public policy reason it saves there being the need for a trial, with the attendant delay and strain on witnesses. This means, consistent with that practice direction, he ought to attract a discount of around one-third, which in a murder case is a substantial reduction of years, and which ought to reduce the sentence of 54 years back to 36 years.
- 26 However, unusually, I am not going to grant the full discount of one-third, being 18 years, but instead of will grant 14 years, reducing the sentence from 54 years to 40 years. The reasons for this are as follows:
- a. The case against Charles was overwhelming, neighbours watched him do the killing, and prepare for it. This means that without a psychiatric defence, he was always going to be convicted, so that discount for his plea must be tempered by the knowledge he had little choice but to plead.

- b. The sheer torrent of emotion unleashed in court yesterday, when members of Urcil Martin's family spoke so movingly, makes it quite simply inappropriate to give him the full discount when he was always going to have to plead.
 - c. The fact the sentence has been likely reduced from life without release to a determinate sentence because he has pleaded, means that there is an element of discount already in creating a determinate sentence, so that he can properly receive less than the full discount on the calculated determinate sentence.
- 27 Plainly, the plea of guilty has gone a long way to reducing Charles time in jail, assuming he survives the sentence. I mention this so that Trecia Martin might understand that the plea makes it invidious for the court to place Charles forever behind bars as she asked.
- 28 The formal sentence of 40 years, having been calculated as above will attract remission of one-third, if of good behaviour, so that Charles can expect to serve a minimum of 26 years and 8 months before being eligible for release.
- 29 Moreover, I order that prior to release, if ever, he must be the subject of a thorough psychiatric assessment, so that a psychiatrist adjudges him safe, if at all, to return to the community.
- 30 Time spent on remand shall count, to be calculated by the prison.
- 31 As to ancillary orders, I order the cutlass destroyed.
- 32 *Elton Charles, please stand up.* What you did was evil. You devastated the whole family when you butchered Urcil Martin to death with a cutlass, whose children unforgettably saw him with terrible wounds dead in his yard. Had you been convicted by a jury, you would likely have received a life sentence without release. But you pleaded guilty, which stays my hand. For the murder of Urcil Martin on 04.05.15, the sentence is 40 years in imprisonment. You shall be eligible for remission if of good behaviour after serving two-thirds. Time spent on remand shall count. I order the cutlass destroyed. You may go down.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

14 May 2019