

SAINT LUCIA

**EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

CASE NO. SLUCRD2017/0212A

BETWEEN

THE QUEEN

and

RAYMOND POPO

Defendant

Appearances:

Daarsrean Greene Counsel for the Crown

Jeanot-Michel Walters Counsel for the Defendant

2019: March 6, 28

DECISION ON SENTENCING

[1] **TAYLOR-ALEXANDER, J.:** The Defendant was indicated for the murder of Cleton Justin. At arraignment he offered a plea not guilty to murder and guilty to manslaughter. The plea was accepted by the Crown. He is now to be sentenced.

Facts

[2] An argument ensued between the deceased and the Defendant at a shop in Morne Panache, Dennery. The pair has been known to argue frequently despite being in each other's company all the time. They were asked to exit the shop and stop arguing. The deceased was heard saying to the Defendant "Sorry partner sorry!". The deceased was then seen coming out of the shop with a brown wooden stool raised in the air. The Defendant swung his cutlass in the direction of the stool and the Defendant. It ricocheted off the stool and hit the deceased in the neck. The deceased fell to the ground and began bleeding. The deceased

received what appeared to be a very deep wound to the left side and back of his neck. He succumbed to his injuries. The Post Mortem Examination Report of Dr. Heather Emmanuel dated 6th March 2017; stated that the cause of his death was due to hemorrhagic shock, secondary to the chop wound to the neck.

- [3] In his statement under caution, the Defendant stated that while he was at the shop, the deceased entered the shop and there was an exchange between them. The deceased accused him of interfering with his brother's girlfriend and threatened to harm him. The Defendant explained that he went outside the shop to smoke a cigarette, with his back to the shop when he felt a blow to his back. According to the Defendant he immediately reacted by swinging his cutlass and it made contact with the deceased's neck.

Pre-Sentence Report

- [4] Community residents described the Defendant as a quiet, friendly, helpful and loving individual, who is not a troublemaker. In fact, the Defendant and the deceased were close friends who socialized together. According to residents, the two ate and got intoxicated together and would normally sleep underneath peoples' home until they recovered.
- [5] To the probation officer, the Defendant lamented that he could not understand himself after the incident and the fact that the deceased's behavior had caused him to react in that matter. He stated that he was in shock and stood in the same spot for a while, knowing that he had never found himself in a situation like that before. The Defendant disclosed that he thinks about the situation all the time and were he to relive the event, he would not have confronted the deceased nor provoked him. He added that had he seen the deceased coming towards him he would have reacted differently. The Defendant deeply regrets the situation and explained that he used to be friends with the deceased and they had no prior issues. He stated that although his action was not deliberate, he accepts full responsibility. He asks for the Court to be lenient in its sentence of him.

Victim Impact Statement

- [6] The deceased's mother informed that his death is a great loss to the family since he was the one who did repairs to the family's home. At the time of his death he was in the process of painting the home. She disclosed that it has been a very difficult time for her which has exacerbated her diabetes and hypertension. For some time, she could not sleep nor eat. She stated that on the day of the incident, the deceased left to pick up his tools and she expected him to return. She feels cheated as she never got to say goodbye to her son and that for her, is the most painful part. She thinks about him every day and believes she will only be okay after she dies. She informed that it has also been difficult for her ailing husband who asks for the deceased every day.
- [7] The deceased sister, Perle Stanislas stated that she was shocked upon learning of her brother's untimely death. She has had a hard time coping. She explained that she did not report to work for an entire month after his death and when she did, she still had to take more time off. Although she feels better now, she misses her brotherly dearly. She informed that the Defendant was like a brother to her; he frequented the family's home and it is unimaginable that he is the one who took the deceased's life.
- [8] The deceased's daughter, Nella Justin informed that she is not over her father's death since they shared a very close relationship. She feels betrayed by the Defendant. She says it hurts her to know that her father, did not do anything to deserve death because he was not a violent person. Her father was generous to the Defendant and often gave him personal items. For him, nothing was too much to do. She wants the Defendant to suffer just like her father did. She is disappointed that no one, including the investigating officer came to offer any words of solace, nor to inform them of the various court dates. She requests counselling to help her cope with her father's death.

Decision on Sentencing

- [9] The offence of manslaughter carries a maximum penalty on indictment of a life imprisonment.
- [10] I had the benefit of oral submissions made by Mr. Jeannot Walters for the Defendant and Mr. Daarsrean Greene, the Director of Public Prosecutions. Both Counsels submitted the established benchmark in this jurisdiction for manslaughter is fifteen (15) years. This was confirmed in the Criminal Appeals of:-
- (i) **Hilary Tench v Q** Criminal Appeal No 1 of 1991
 - (ii) **Johnathan St. Rose v Q** Criminal Appeal No 1 of 2016
 - (iii) **Kenneth Samuel v Q** Criminal Appeal No 7 of 2005
- [11] I am guided by the established judicial principles of sentencing laid down in **R v Sergeant** and re stated by our Court of Appeal in **Desmond Baptiste et al v The Queen**. These are stated to be Retribution, Deterrence, Prevention and Rehabilitation. These are the principles that a sentencing judge is required to keep at the forefront of his or her mind when he or she presides over a sentencing.
- [12] As to which of these principles prevail in this case, I have had due regard to the victim impact statement and the cry for retribution echoed by the family members, who continue to struggle today, to cope with the loss of their loved one. I am also satisfied that incidents of Harm, Dangerous Harm and Death resulting from cutlass attacks are outweighed on the Court docket only by sexual offences. I remain apprehensive about the likelihood of rehabilitation of the Defendant given his age. He is 66 years old. The Defendant had grown accustomed to his culture within his community, which way of life has alcohol and binge drinking at its centre. He admits to have lived that exact lifestyle from age 17. This incident for which he is before the court, took place after the deceased and the Defendant had been drinking. Both the Defense and the Crown, submit that despite the Defendant's propensity to binge drink, which started as a young man, this is his first encounter with the law.

[13] Both submit that rehabilitation has started during his time incarcerated as he has not been exposed to alcohol, and is reputed to be a model prisoner. The Director of Public Prosecutions suggests that rehabilitation is still possible but it should be obtained within the facility and not on the outside. I have accepted this submission, drawing me to the conclusion that Retribution, General Deterrence and Rehabilitation are the principles to be prioritized.

[14] **Starting Point**

The attack although alleged to have been a retaliatory, was brutal, and went far beyond what was required to abate an attack. The daughter of the deceased was very emotional when she addressed the Court on how she came to find her father lying in a pool of his own blood. She, together with Editha Stanislas and Perle Stanislas, the deceased mother and sister describe the emotional turmoil and psychological impact the deceased's death in this untimely circumstance has had on them.

[15] The increasing frequency of cutlass attacks are concerning. They normally result in the loss of limbs or the loss of life, as it was in this case. Often the motive for the attack seems senseless and all too often it is accompanied by binge consumption of alcohol. In this case the brutality is mitigated by that the fact it was provoked. I accept that this is a case of medium culpability. I reject the submission that it was an entirely reflex action as there was no basis for the Defendant to have been in possession of the cutlass at the time. I have settled on a starting point sentence of fourteen (14) years.

Application of the Aggravating and Mitigating Factors of the Offender

Aggravating

The Defendant was excessively inebriated which impaired his judgment.

Mitigating

- (1) An Early Guilty plea.
- (2) He is of previous good character.
- (3) The Defendant's genuine remorse.

After cancelling out, the Defendant is to benefit from a further deduction of 2 years on the starting point, and an overall 1/3 discount for the guilty plea.

Sentence

1. The Defendant is sentenced to eight (8) years imprisonment at Bordelais Correctional Facility.
2. He is to be credited with time spent on remand.
3. The Defendant is to undergo drug and alcohol rehabilitation therapy and Anger replacement therapy.
4. Probation Services are directed to make counselling services available to the family members of the deceased especially for the deceased's daughter.

V. GEORGIS TAYLOR-ALEXANDER
HIGH COURT JUDGE

BY THE COURT

REGISTRAR