

**EASTERN CARIBBEAN SUPREME COURT
ST. CHRISTOPHER CIRCUIT**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCR2018/0024

BETWEEN:

DIRECTOR OF PUBLIC PROSECUTIONS

V

CLIVE SYLVESTER WILLIAMS

Appearances:-

Mr. Vaughn Henderson, Crown Counsel, for the Director of Public Prosecutions.
Mr. Jason Hamilton and Ms. Zoie Hamilton for the defendant.

2019: March 5,

JUDGMENT ON SENTENCE

Introduction

[1] **WARD J.:** On 3rd December, 2018, the date fixed for trial, the prisoner sought a sentence indication. A sentence indication hearing was conducted on 4th December, 2018. The Court indicated a maximum sentence of 5 years, 1 month, 3 days were a plea to be entered at that stage of proceedings. On 12th December, 2018 the prisoner signified his acceptance of the indication.

Summary of agreed facts

- [2] On 9th October, 2017, the prisoner was at his parents' residence with his father. His sister, Yvette Wood, and his brother, the deceased Mervin Flaherty, were present to attend the funeral service of their mother which was scheduled for later that week. Both of them resided outside of the jurisdiction. The prisoner resided at the home permanently and acted as caretaker for his parents.
- [3] The relationship between the deceased and the prisoner had been strained even before this reunion and the circumstances under which they were now forced to interact caused even further tension between them.
- [4] During the course of that day the deceased began saying to the prisoner that he would have to get out of the house. It was his intention that the prisoner should move out of the house. The deceased further threatened the prisoner that he would bring another of their siblings to help evict the prisoner and threatened that they would "rample him up", meaning that they would use physical violence on him.
- [5] Yet another argument later arose between them over their mother's funeral expenses after the issue was raised by their sister. Shortly thereafter, while the prisoner was assisting his elderly father to his room the deceased shouted at him to "let go me father" then shoved the prisoner causing his father to fall to the floor. The deceased then threw two glass bottles at the prisoner, one of which shattered against the wall close to the prisoner while the other struck him in the shoulder.

[6] A physical altercation ensued during which the prisoner inflicted one stab wound to the deceased's chest with a knife which he had had on his person having returned from attending his farm in the mountain.

[7] The deceased died en route to the hospital from hypovolemic shock.

Discussion

[8] In the Federation of St. Christopher and Nevis, the maximum penalty prescribed for manslaughter is life imprisonment.

[9] In performing the sentencing exercise the cardinal principles of sentencing are uppermost in my mind:

Punishment: The objective here is to reflect society's abhorrence of criminal conduct especially of this type of offence;

Deterrence: This may be specific or general and is aimed at not only deterring the particular offender from relapsing or engaging in recidivist offending but also to deter like-minded people from engaging in similar deviant behavior;

Prevention: This is aimed at protecting society from offenders who persist in high rates of criminality by imposing protracted sentences designed to keep them away from society.

Rehabilitation: Here, the court considers whether the offender is capable of rehabilitation and reintegration into society as a contributing member of society. The court is concerned to shape the sentence in a way that assists in achieving this objective.

- [10] In some cases, all of these aims may not necessarily be met. The duty of the court is to consider which of these will be best served by the sentence to be passed on a particular offender.
- [11] In this case, the aims of deterrence and prevention are to be ascribed less weight as the crime was a spontaneous and uncontrollable reaction. I respectfully adopt the reasoning of the Court of Appeal in **Kenneth Samuel v The Queen**,¹ where Barrow J.A. stated: "A spontaneous and uncontrollable reaction does not lend itself to being deterred either in the offender or in others."
- [12] As to prevention, which is aimed at protecting society from offenders who persist in high rates of criminality by imposing protracted sentences designed to keep them away from society, the prisoner presents as a person of previously good character. Thus, this element of sentencing does not attain prominence in this sentencing exercise.
- [13] In constructing a sentence for manslaughter based on provocation it must be assumed that the offender, at the time of the killing, lost his self-control; by things done or said by the deceased and that the loss of self-control was reasonable in the circumstances sufficient to justify the case being reduced from murder to manslaughter. See **Attorney General's Reference (Nos. 74, 95, and 118 of 2002) Suratan and others**.²
- [14] In cases of manslaughter by reason of provocation a custodial sentence is invariably presumptively appropriate having regard to the loss of life caused by manslaughter. The words of Shaw LJ in **R v Bancroft**³ are apt to explain the rationale:

"Notwithstanding that a man's reason might be unseated on the basis that

¹Criminal Appeal no.7 of 2005 - Kenneth Samuel v The Queen

² [2003] 2 Cr App R (S)

³ (1981) 3 CAR (S) 119

the reasonable man would have found himself out of control, there is still in every human being a residual capacity for self-control, which the exigencies of the given situation may call for. That must be the justification for passing a sentence of imprisonment; to recognize that there is still left some degree of culpability...”

- [15] The first step in constructing the sentence is to establish the starting point. Authorities emanating from within the jurisdiction of the Eastern Caribbean Supreme Court suggest a 15 year starting point for the offence of manslaughter. See **Kenneth Samuel v The Queen**, *Supra*. A review of some cases from within the Eastern Caribbean shows a sentencing range in practice between 4- 10 years.
- [16] The United Kingdom’s Sentencing Guidelines on manslaughter by reason of provocation, while not binding on this court, provide helpful assistance to the approach to be taken in arriving at an appropriate sentence in such cases.
- [17] Relevant to the calibration of an appropriate starting point is the degree of provocation as shown by its nature and duration. In this case, the evidence reveals that there was a persistent course of provocative words and acts directed at the prisoner by the deceased throughout that day. These started with the threat to have him evicted with an expressed intention to resort to physical violence with others to achieve that objective, and escalated with the deceased recklessly shoving the prisoner while he carried his elderly father, which caused the elderly man to fall to the floor. Matters culminated immediately thereafter with the deceased arming himself with a couple of glass bottles with which he launched an attack on the prisoner. This proximate act prompted an immediate physical altercation during which the prisoner lost his self-control and stabbed the deceased once.

- [18] Set against the background of a course of provocative conduct over a short period, and considering its cumulative effect and that the actions of the deceased would have had a marked effect on the prisoner who was at the time mourning his recently deceased mother, I am led to view these circumstances as constituting a substantial degree of provocation. Accordingly, I ascribe a starting point of 8 years.
- [19] I next consider the circumstances of the killing to discover whether there are any aggravating or mitigating factors. Here the prisoner reacted spontaneously and immediately to a violent assault. While a weapon was used, the more important consideration is how it came to be introduced into the confrontation. On the agreed facts, the evidence is that the knife was on the prisoner's person as he had recently returned from his farm in the mountain. It cannot be said that it was carried with him with the intention of being used to inflict injury to the deceased.
- [20] Accordingly, I see no warrant for any uplift in the starting point of 8 years.
- [21] I turn next to consider whether there are any aggravating or mitigating factors personal to the offender. There are no aggravating factors relevant to the prisoner.
- [22] However, by way of mitigation, the prisoner comes before the court with a clean record. His neighbours for the most part expressed shock on learning of the incident, saying that they would never have thought to associate him with violence. Duncan Wattley, a Senior Lecturer at the Clarence Fitzroy Bryant College, and one of the prisoner's neighbours who has known him almost all his life, describes him as a quiet man who went about his daily business in a peaceful manner. He expressed shock

on hearing of the incident which he views as out of character for the prisoner.

[23] The Social Inquiry Report reveals that the prisoner has expressed his sorrow and regret at this incident and seems deeply and genuinely remorseful. He has reconciled himself to the fact that he must be punished by the Court but says the greatest punishment for him is that for the rest of his life he must live with the fact that he killed his own brother. He is very concerned about how he may be perceived by the community and his family and whether they will forgive him. So much so that with the passing of his father while he was incarcerated, the prisoner felt so uncomfortable at the thought of meeting up with his siblings and the dynamics that might have been at play that he decided not to attend the funeral.

[24] According to the Social Inquiry Report, he is regarded as a model inmate, thus, his prospects for rehabilitation are considered high.

[25] In the Court's assessment, these mitigating factors purchase a discount of 18 months, resulting in a downward revision of the provisional sentence to 6 years and 6 months.

[26] I next consider credit for a guilty plea. In this case the prisoner did not plead guilty at the earliest reasonable opportunity but after a trial date had been set. A guilty plea at such a late stage allows for a credit in the order of a one tenth discount. This leaves a sentence of 5 years, 10 months.

[27] It is also settled that a prisoner who falls to be sentenced should be credited for time spent in pre-sentence custody. The court has been advised that the prisoner has spent 1 year, 4 months and 24 days in pre-sentence custody. This period is deducted from his sentence.

- [28] In shaping the sentence, I have had regard to the contents of the Social Inquiry Report and the submissions of Counsel and the authorities cited
- [29] The court has sought to arrive at a sentence that meets the aims of punishment and rehabilitation and eventual re-integration as a productive member of society.
- [30] **Clive Sylvester Williams** the appropriate sentence in this case would have been 8 years imprisonment. However, taking account of your personal mitigation, credit for guilty plea and time served you will serve a sentence of 4 years, 5 months and 4 days commencing today.

Trevor M. Ward, QC
Resident Judge

By the Court

Registrar