

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCR2015/0042

BETWEEN:

THE QUEEN

V

JOSHUA MITCHELL

Appearances:

Ms. Crisan Greenidge & Mr. Howard Pinnock for the Prosecution
Mr. Ashley Bernadine for the Defendant

2017: (Hearing dates) March 23, April 11;
(Sentence delivered on) April 11.

SENTENCING JUDGMENT

Criminal Law – Sentencing – Non Capital Murder – S.230 and S230 B(1) Criminal Code as enacted by the Criminal Code (Amendment) Act 2012 - Juvenile Offenders – Offender Bullying - Mental health – Mental disorders and treatment – Counselling – Social services counselling and support – Social services an integral part of the criminal justice system – Appropriate institution for housing young offenders – Aggravating and Mitigating Factors - Duty to ensure that young and vulnerable prisoners are kept safe.

[1] **AZIZ, J.:** On the 24th November 2015 the defendant Mr. Joshua Mitchell pleaded guilty to the offence of non-capital murder by intentionally causing the death of his grandmother Doril Mitchell. A social inquiry report was ordered along with a psychiatric report for the sentence hearing. The sentence date was fixed for hearing but unfortunately had to be adjourned on a couple of occasions for

clarification from medical experts, and ill health of prosecution and defence counsel. The adjournments were in no way attributed to the defendant.

Facts

- [2] The deceased Doril Mitchell, the defendant's grandmother lived with her son Donald Mitchell, downstairs his garage in Birchgrove, St Andrews. The defendant also resided with his grandmother until the middle of 2014, whereupon he was asked to leave as it was felt that he was not getting on with his grandmother. The defendant would continue to visit the deceased. The deceased Doril Mitchell was seen over the course of the 14th and 15th November 2014 by her son Donald and granddaughter Jacqueline Mitchell. On the 16th November 2014, the deceased's son, Donald, went to visit his mother. On his arrival he called out to his mother and got no response. He then went to the back of the house, opened the door and went inside. Donald had to use the flashlight on his phone to shed light in the room as it was dark. Donald discovered his mother lying on her mattress on the floor which was not unusual. He thought his mother had died in her sleep and he called the undertaker. When the undertakers arrived, Donald went to the front door and found it to be unlocked, they entered the house and it was at that time that the deceased was observed to be sleeping in a position that she never does, she was not wearing any underwear and her t-shirt was pulled up under her breast. They also noticed that there was blood on the ground and her left eye was swollen as well as being black and blue.
- [3] The police arrived and it was then that Detective Constable Pierre from the CID noticed the deceased and her position, so he called the district medical officer Dr. Johnson.
- [4] Dr. Keith Johnson attended at the scene and examined the deceased. He noted the deceased lying with her face upwards with her clothing partially lifted but lower clothing completely off. The following injuries were noted:

- i. Soft tissue swelling around the left eye,
- ii. A puncture wound behind the left ear lobe approximately ¼ inch long,
- iii. Five digital indentations of the anterior and lateral aspect of the neck,
- iv. Swollen tongue with bloody secretions oozing from the mouth,
- v. A small tear of the vulva with bleeding from the vagina.

[5] Dr. Johnson noted that there was no sign of life and pronounced that Doril Mitchell was dead.

[6] On the 17th November 2014, Dr. Mabel Leon Alvarez carried out an autopsy on the 84 year old deceased and completed a post mortem report with her findings which were:

- i. Hematoma 6 x 3 cm on the left eye,
- ii. A 1 x 1 cm laceration to the first finger on the left hand,
- iii. A 1 x 1 ½ cm laceration below the right ear with haematoma beneath the skin,
- iv. Five small bruises or marks on the neck which revealed hematoma on both sides of the neck.
- v. There was a contusion of the right occipital lobe of the brain measuring 1 x 1 ½ cm,
- vi. Contusion and subarachnoid hemorrhage of the measuring 3 x 3 cm,
- vii. Edema of the brain,
- viii. Blood in the vagina with small laceration of the labia major
- ix. Diffused petechiae in the pleura of both lungs.

[7] The causes of death according to Dr. Alvarez were asphyxia and strangulation.

- [8] The defendant was arrested on the 20th November 2015 and taken to Grenville Police Station and thereafter to the Princess Alice Hospital for medical examination and psychiatric evaluation.
- [9] During the defendant's detention at Grenville police station, in the presence of other CID police officers, his guardian Mrs. Celia Fletcher and a justice of the peace Mrs. Joan Ventour, the defendant chose to give a cautionary statement to the police. The statement was as follows:

"I used to stay by my grandmother so in the morning ah went there and asked her for something to eat. Ah went there Sunday morning at about seven o' clock. When ah reach there ah see the door half open. Ah went inside and ah ask her for something to eat and she tell me she doh have, ah went inside she was getting on and cursing me telling me what ah come bothering her for thing to eat. She had a piece of stick in she hand and she lash me with it then afterwards we started to fight and ah get ignorant and started to cuff her up then she fall. Afterwards ah went up on her. I was still there and ah was holding her in her throat, then I let go and ah just go down the road and ah just forget it. That's it."

Professional Assessments

- [10] The defendant's actions at the time would have seemed deliberate and certainly calculated to cause harm but for his diagnosed illness. The defendant however took advantage of his 84 year old grandmother.
- [11] There were several psychiatric reports prepared at the request of the Court and Director of Public Prosecution's Office. On the 5th December 2015, Dr. Omar Rivero a consultant psychiatrist prepared a report on the defendant having seen him on the 30th November 2015.

- [12] The assessment at Mt Gay Mental Hospital lasted 1 hour and 20 min, and it was very apparent that the defendant's family had a history of psychiatric illness. Dr. Rivero stated in that report, that the defendant was first seen in hospital when he was 6 years old in 2003, having been brought in by a social worker of Queen Elizabeth home for children. The defendant at that age was described as having "abnormal behavior" which took the forms of aggression and violence. The defendant also heard voices speaking to him telling him on one occasion to burn his house down.
- [13] The diagnosis was psychotic disorder/schizophrenia. The report confirmed that on the day of the offence (21.11.14) the defendant was assessed by Dr. Melba Romaguera and he was very psychotic having visual and auditory hallucinations, delusions and paranoid ideas.
- [14] Dr. Rivero opined that based on the assessment on the 30th November 2015, and in conjunction with the progress made, the defendant was free from psychotic symptoms, and was therefore able to understand the legal process and give instructions to his attorney.
- [15] On the 7th December 2015 Mr. Ignatius Mungo, a social worker at the Mt. Gay Psychiatric Hospital, interviewed the defendant at Her Majesty's Prison, Richmond Hill and found him to be cooperative and friendly. In that interview it was made clear that the defendant has a problem remembering important information, dates and events. The defendant commented that he was not aware that he had committed a crime to be at prison.
- [16] On the 6th April 2016, Dr. Dick Burkhardt, a Neurologist, Psychiatrist and Psychotherapist did a further assessment for the Court. As a result of that assessment by Dr. Burkhardt, it was thought that the defendant was fully oriented, intellectually challenged, has short term memory deficit, significantly reduced attention span, has problems to interact normally in an interpersonal context and

has not developed healthy coping strategies when it comes to dealing with frustration. The defendant is intellectually disabled but understands what he is accused of.

Social Inquiry Report

- [17] The social inquiry report indicated that the defendant appeared to be unsettled throughout, preoccupied with non-related issues and confused. The defendant gave jumbled and incoherent responses whilst seemingly pre-occupied and expressing that he loved being in prison and the food was nice. In that interview the defendant accepted choking the deceased but denied responsibility for her death. The defendant has had a history of aggression and confrontation in relation to the deceased. The report also set out some rather concerning information relating to the fact that the defendant in the past set two houses on fire. It has become clear, very clear that there is a history of mental illness in the defendant's family. Those who knew the defendant and specialists agree that the defendant reasons below his age level (it may be a learning difficulty). The defendant does need assistance to deal with his mental health issues. Schizophrenia is a disorder which the defendant had for some time, and is now receiving the appropriate treatment.
- [18] The defendant's actions have been linked to his mental health and there is a high risk of re-offending without formal psychiatric intervention. The report from the consultant psychiatrist says that he was very psychotic at the time of the offence.
- [19] According to the social worker at the psychiatric hospital the defendant stated he was not aware that he committed a crime to be at the prison. This was on the 7th December 2015. The psychiatrist saw him on the 5th December 2015.

Addendum Social Inquiry Report

- [20] As the initial social inquiry report was prepared for submission in 2015, the Court ordered an addendum update report. This report set out that the defendant was now more matured and appeared to be quite calm. The report set out that the defendant spends his day looking after himself and most importantly taking his medication. The defendant does find it difficult that he is in an institution with people he says has done worse things than himself, and finds prison hard whilst trying to fit in.
- [21] The Court also noted with concern that someone as young as the defendant with mental health issues is trying to fit in. The report also clearly set out that this defendant has been used and abused¹ by more seasoned inmates. This to my mind illustrates the need for a specialized institution for young offenders, especially first time offenders who can receive the most appropriate rehabilitation and treatment which would enable them, upon reintegration into society to become productive members of their communities, society and Grenada as a whole.
- [22] It is also stated that the defendant behaves well, obeys instructions and co-operates with everyone. He attends Bible studies in the evenings and to his credit has successfully completed a basic literary course, but must be supervised as far as taking his medication but does take Cogentin and Restidol willingly.
- [23] The defendant avoids thinking about his grandmother's death, as he says it brings tears to his eyes, but now seems to acknowledge that he had asked her for food and shortly after he had fought with her and in the course of doing so he snapped. This is all part of the acceptance of responsibility for his actions not only to himself but acknowledging that his behavior is unacceptable to the family and wider community.

¹ Addendum Social Inquiry Report, Pg 3 para [4]

- [24] This report concluded that as far as assessment² was concerned, the defendant's disposition and interaction was cheerful and somewhat assertive, being open in his discussions about himself and his family. He was more articulate and made progress with his literacy but more work was needed. The authorities also were concerned and made it clear to those at Her Majesty's Prison Richmond Hill that they must ensure that vulnerable prisoners are not taken advantage of by other inmates. This is of critical importance especially where there are young and vulnerable persons being admitted into an institution that should keep safe and rehabilitate those in its charge. It cannot be said any longer that the young and vulnerable ought to be housed in adult offender institutions. This practice will only allow those who are easier to rehabilitate to be groomed and bullied by those more serious and career criminals.
- [25] The most common method of bullying involves verbal threats and spreading untrue rumours. In various prisons, inmates were self-identified in one of four categories, as either bully, bully and victim, neither bully nor victim, and victim. Self-reported bullies were shown to have spent a greater total amount of time in prison than self-identified victims. Self-reported victims were shown to be less likely to have a record for violent offences than other inmates. The main characteristic identified by inmates as predisposing towards being a bully was knowing a lot of inmates, while the main factor that predisposed toward being a victim was type of offence. Inmates who had spent a greater total amount of time in prison were more likely to be bullies, regardless of current prison location, prison regime, or whether currently on remand or serving a short- or long-term sentence³.
- [26] This clearly demonstrates some of the real and imminent issues that the country, courts and communities are faced with, and for which new and innovative

² Addendum Social Inquiry Report, Pg 5

³ Journal of Applied Communal and Applied Social Psychology: Bullying among Scottish Young Offenders: Inmates' Self Reported Attitude and Behaviour. Volume 7, Issue 3 1997.

solutions must be found to ensure that young offenders can be adequately punished, but reformed and rehabilitated in a safe and secure environment.

Victim impact

- [27] Donald Mitchell has stated that his mother's death has had a double impact on him. He discovered the deceased and went into a state of shock. He has lost something deep which he continues to experience. His mother was his best friend and he now feels a great sense of guilt and sadness because he allowed the defendant to live with her in an effort to assist him in finding accommodation. He is plagued by the sight of the deceased on the day she died and he simply trusts in God to help him get through.
- [28] The maximum sentence for non-capital murder is life imprisonment. This is a natural life sentence. The Court has a discretion to impose any less term of imprisonment.
- [29] The Court has due regard to the principles of sentencing and of course rehabilitation of an offender. The Court must consider the offence and the offender, culpability, remembering the sentence must be commensurate with the gravity of the offence. I have considered the case of **Regina v David Roberts**⁴. It is clear that this defendant is capable of social re-adaptation, and there is nothing to suggest that if he were to religiously take his medication he would find himself in any form of trouble again.
- [30] There is also nothing to suggest that the defendant is in need of deterrence, but of course general deterrence is always important as in Grenada there are too many violent crimes being committed senselessly.

⁴ Criminal Appeal No. 8 of 2008

- [31] The defendant is a first time offender, and there is nothing once again to suggest that he needs to be prevented from further crime. This being said the Court notes that his offending is related to a mental health disorder which must be controlled and supervised. In this case prevention is considered but from a global perspective as again no evidence to suggest that with his medication he will commit further offences.
- [32] The defendant is capable of rehabilitation and this has been evidenced through the many reports prepared and submitted for the sentence hearing. The defendant seems to be in a better place and making progress in small steps but still steps in the right direction.
- [33] As far as punishment is concerned, this case involves one of the most serious offences that can be committed and involves the senseless loss of life. There must be a strong message sent, that the Courts cannot and will not tolerate this type of crime in society. Life is sacred in addition to which there is an extremely high value placed on life.
- [34] I also consider the issue of dangerousness and a life sentence being imposed. I have looked at the UK law for guidance and some preconditions for a life sentence. There are a number of cases in which a life sentence has been passed but with a minimum term to be served "a tariff" of 30 years. I refer myself to S.230 A(5) where the factors are set out to be taken into account and I am of the view that they apply to S.230(B).

Aggravating Factors

- [35] The Court has to consider all of the circumstances and conduct a balancing exercise between the aggravating and mitigating factors. It was submitted by Mr. Pinnock, prosecution counsel, that the following were some of the aggravating factors in the case; the deceased was an elderly and vulnerable victim; she was in

the comfort and safety of her home when this unsuspecting attack occurred in the most brutal and callous manner. This, the prosecution says, was a cold blooded attack. The most serious of aggravating factors is the fact there has been a senseless loss of life.

Mitigation

[36] Mr. Bernadine submitted on behalf of the defendant that firstly:

1. The defendant was a Juvenile at the time (age) 17.
2. The defendant has no previous convictions and a person of previous good character.
3. There was an early guilty plea, or one entered at the earliest reasonable opportunity.
4. The defendant co-operated with the police during their investigations, and had he not assisted, it would have proved much more difficult for the police to solve this crime.
5. The defendant does suffer from significant mental health issues and has a family history of the same.
6. Although counsel submitted that there was no weapon used, the Court finds that the use of a fist or foot does constitute the use of a weapon, but there is little evidence to suggest that the crime was planned or premeditated.
7. Counsel also submitted that there have been decided cases⁵ from Grenada that indicated a range of sentence from between 17 to 18 years imprisonment, in which there were further aggravating circumstances and for which the accused were adult offenders.

⁵ R v Davidson Paul Case No 116 of 2008 and Nigel Sookram v R [2011] UKPC 5

- [37] The fact that the defendant does not have a criminal record by itself doesn't in this case afford much mitigation when dealing with a case of this nature and gravity⁶
- [38] As indicated earlier, the defendant pleaded guilty at the earliest opportunity. He committed a callous, cowardly act of causing serious harm to the deceased. It is also very clear to the Court that the defendant suffered from a mental health disorder. This is not a defence but a factor which the Court must bear in mind when determining the sentence to be passed on the defendant.
- [39] Furthermore as the defendant is now 18 years and 9 months and was 17 at the time, the Court has also considered S.230 (A), S.8 & S.9 and although it deals with capital murder it must follow that if the court has been given the power to sentence a young offender to a term deemed appropriate, then the same would apply for non-capital murder. Therefore in this case the Court will fix a determinate sentence.
- [40] The Court has also referred itself to the case of **R v Kezia Chandler**⁷. Various points were made in that case including the offender being sentenced shortly after the offence occurred and of course the personal characteristics of the offender, risk of harm, risk of re-offending and also risk of dangerousness which there is no provision for in the St. Lucia legislation. See **Cullen v The DPP**⁸.
- [41] This Court can pass a maximum of life imprisonment for this offence, but it isn't the worst of cases that the Court would have seen in this category of offending.
- [42] I have already referred to **Desmond Baptiste v R**⁹. It is right that the Court has a balancing exercise to be carried out between the offence and the offender, and we must strive not to put first time young offenders into institutions that would breathe

⁶ See Criminal Appeal No. 8 of 2003; **Desmond Baptiste v R**

⁷ SLUHRD2009/1105

⁸ (2013) 6 JIC 1701

⁹ Criminal Appeal No. 8 of 2003 per Byron CJ

contempt and allow further criminalization but society must be protected from harm. One must consider the level of culpability of each offender.

[43] The reports placed before this Court deal with the defendant's behavior now on medication and it is clear that if well monitored and treated the defendant may lead a normal and productive life but I stress well monitored and treated with formal intervention by those skilled and experienced to do so. Social services ought to benefit from sufficient aid and funding to allow them to carry out effective functioning within the community. They (social services) are an integral part in the reforming and performing within the nervous system of the Criminal Justice System. This is what justice and fairness dictates. This is even more critical when considering sentences for vulnerable and juvenile persons.

[44] The family have asked the Court to pass whatever sentence is appropriate in this case and which will address all the principles of sentencing. As I said and repeat sentence is an art not a science and one must always take a few steps backwards and look at the overall picture bearing in mind the nature and gravity of the case along with individual circumstances of any offender.

[45] This is not a case of provocation or accident but one where there is a mental health issue. The Court has seen and read reports about schizophrenic disorder and how it occurs, the level and maturity of the defendant and remorse if any. But again in this case the strong mitigating factors are the mental health element, age of the defendant and plea of guilty.

[46] Bearing in mind the circumstances of this offence, the guilty plea and age of the offender the sentence of the Court is a determinate sentence. If the circumstances were different then the Court would have considered a rational starting point of 30 years¹⁰. In **Harry Wilson v Regina**¹¹, Rawlins JA (as he was at the time) stated the following:

¹⁰ R v Jean Fontinelle, (SLUCHRD2011/1679)

"That it is a mandatory requirement in murder cases for a judge to take into account the personal and individual circumstances of the convicted person. The judge must also take into account the nature and gravity of the offence, the character and record of the convicted person, the factors that might have influenced the conduct that caused the murder, the design and execution of the offence, and the possibility of reform and social re-adaptation of the convicted person".

Rawlins JA further stated:

"In summary, the sentencing judge is required to consider fully two fundamental factors. On the one hand, the judge must consider the facts and circumstances that surround the commission of the offence. On the other hand, the judge must consider the character and record of the convicted person. The judge may accord greater importance to the circumstances, which relate to the commission of the offence. However the relative importance of these two factors may vary according to the overall circumstances of each case".

[47] The Court having had regard to what was stated by Rawlins JA (as he was then) and having examined the case at bar reiterates that the defendant was a juvenile¹² with mental health disorders, previous good character, combined with the additional mitigation that has been advanced and set out above, but the Court balanced these considerations with the following: that this was a senseless loss of life; the elderly and vulnerable deceased being in the comfort and privacy of her home at the time of the attack; therefore the Court considers that the appropriate notional starting point for sentence in this case is 24 years.

¹¹ Also referred to in R v Kester Williams, GDAHCR0097/2008

¹² Defined within the Criminal Code, CAP 72A, Section 74

- [48] The defendant will also be entitled to his full credit and any time spent on remand credited towards his sentence. The Court will also discount that sentence further, for the delays encountered through no fault of the defendant. That discount will be 12 months. He will also receive 18 months for his personal mitigation.
- [49] The sentence is therefore a custodial sentence for 13 years and 6 months. The time spent on remand will also have to be deducted from that sentence. This is a sentence which in this Court's estimation vindicates its abhorrence for such a killing by imposing a deserving sentence rather than an extreme one¹³.
- [50] The Defendant must be subject to regular reviews by the social services and the mental health team at the prison. The defendant ought to be kept in an area or other part of the prison with young offenders and should be kept apart from the adult prisoner population for his rehabilitation and protection.
- [51] The Defendant ought to be engaged in courses such as enhanced thinking and anger management counselling, that will continue to assist him for his eventual release and reintegration into society.
- [52] The Court is grateful for all of counsels written and verbal submissions.

Shiraz Aziz
High Court Judge

¹³ Kenneth Samuel v R Criminal Appeal No. 7 of 2005.