

SAINT LUCIA

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

CRIMINAL CASE NO. SLUCRD2014/1120

BETWEEN:

THE QUEEN

Claimant

and

SAMUEL JOSEPH

Defendant

Appearances:

Mr. Daarsrean Greene, the Director of Public Prosecutions for the Claimant
Mr. Leslie Mondesir for the Defendant

2017: January 17.

JUDGMENT ON SENTENCING

[1] **CUMBERBATCH, J.:** The Defendant was indicted by the Director of Public Prosecutions for the offence of Murder contrary to section 85(b) of the Criminal Code 2008 for that he on Tuesday 14th June 2014 whilst intending to cause grievous bodily injury to Lucius Duncan La Porte (the Deceased) caused his death.

[2] At his arraignment the Defendant entered a plea of not guilty and on the 10th June 2016 pleaded guilty to the lesser count of manslaughter. The Crown accepted the plea and after allocutus the Court ordered a Pre-Sentence Report and Psychological Assessment be produced.

THE FACTS

[3] The Defendant and Deceased used to be good friends. However they have a history of hostilities between them. Prior to the commission of this offence the Defendant was convicted for wounding

the Deceased and was sentenced to a period of imprisonment. After his release from the Bordelais Correctional Facility, the Defendant and the Deceased interacted with some level of hostility whenever they met.

[4] On the day in question the Deceased disembarked from a vehicle which he was driving and approached the Defendant who was on the roadside waiting for a bus. They were thereafter embroiled in an exchange of blows. An armed motorist intervened and separated them but when he left the scene the fracas continued. The Defendant whilst armed with a pair of scissors stabbed the Deceased twice.

[5] The Deceased soon succumbed to his injuries and Dr. Stephen King who performed a post mortem examination opined that the cause of death was hemorrhagic shock as a result of a stab wound to the neck.

THE PRE-SENTENCE REPORT

[6] The Defendant was raised by his parents who lived and cohabited in a common law union. His father stated that during his early teens whilst attending secondary school, the Defendant's behavior changed and he became a troublesome person. He was suspended from school on occasions, used drugs and eventually dropped out at age 14 after a fight with his father on school grounds. He also removed from his parents' home . He lived on the streets and became associated with gangs. He also sold drugs for a living.

[7] Though the Defendant has taken responsibility for his actions he has not expressed remorse for taking the life of the Deceased. The Probation Officer opines that the Defendant's aggressive tendencies, substance abuse, poor decision making skills and previous convictions are factors which may lead him to reoffend.

THE PSYCHOLOGICAL REPORT

[8] The psychologist opines that the Defendant suffers from antisocial personality disorder and a prototypical psychopathic personality and his proclivity for recidivism is high. She identified the following as behaviors consistent with his antisocial personality, namely:

- His failure to conform to social norms with respect to lawful behaviours, as indicated by repeatedly performing acts that are grounds for arrest.
- His reckless disregard for safety of self and others.
- His consistent irresponsibility, as indicated by repeated failure to sustain consistent work behaviour.
- His irritability and aggressiveness as indicated by repeated physical fights or assaults.
- His lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated, or stolen from another.

[9] I find the following to be the aggravating and mitigating factors herein:

AGGRAVATING FACTORS

1. The seriousness of the offence which resulted in the senseless loss of a human life,
2. The Defendant is not a first offender,
3. The use of a weapon adopted for the commission of the offence,
4. The Defendant's lack of remorse.

MITIGATING FACTORS

1. The Defendant's guilty plea,
2. The Deceased was the initiator of the hostilities between them.

[10] I have weighed up the aggravating and mitigating factors in light of the facts and circumstances of this case and find that the aggravating factors outweigh the mitigating ones.

[11] In A.G.'s reference Nos. 74, 95 and 118 of 2002 in the English C/A decision of **Regina v Suratan et al** the Court set out assumptions which a sentence must make in favour of an offender found guilty of Manslaughter by virtue of provocation. These are:

"First, he must assume that the offender had, at the time of the killing, lost his self-control. Mere loss of temper or jealous rage is not sufficient.

Second, he must assume that the offender was caused to lose his self-control by things said or done, normally and as in the cases with which we are concerned, by the person whom he has killed.

Third, he must assume that the defendant's loss of control was reasonable in all the circumstances, even bearing in mind that people are expected to exercise reasonable

control over their emotions, and that as society advances it ought to call for a higher measure of self-control.

Fourth, he must assume that the circumstances were such as to make the loss of self-control sufficiently excusable to reduce the gravity of the Defendant's offence from Murder to Manslaughter .

Moreover, the sentencing Judge must make these assumptions whether the offender has been found not guilty of Murder but guilty of Manslaughter by reason of provocation by a jury after a contested trial, or the Crow has accepted a plea of not guilty of Murder but guilty of Manslaughter by reason of provocation."

- [12] The Court must at all-times bear in mind that this is a case of Manslaughter not Murder hence the assumptions aforesaid must be applied. However, the Court is also required to strike a balance between the Defendant's conduct under provocation and his residual degree of culpability.
- [13] The facts disclose that the Deceased was the aggressor . Had he proceeded on his way when he saw the Defendant this incident would not have occurred. However if good sense had prevailed after the Deceased and Defendant were separated by a passerby again this incident would not have occurred. The end result of it all was an unnecessary fatality for reasons unknown.
- [14] The Defendant had previously served a period of imprisonment for wounding the Deceased. Clearly the sound of the shutting of the proverbial iron cell door has not had a positive effect on him. He proceeded undeterred to stab the Deceased with a pair of scissors which he carried for no lawful purpose. No mention is made in the record as to whether or not he received counseling for the offences of violence committed by him.
- [15] The Pre-Sentence Report and Psychological Report reveal personal characteristics of the Defendant which are troubling. He was involved from an early age in substance abuse and together with his relatives participated in criminal activities which included theft and drug trafficking. Not surprisingly he has never learnt a trade and his attempts at employment were unsuccessful as he was terminated for getting into conflicts with his fellow workers.
- [16] The Defendant is clearly in need of therapy to address his drug abuse and anti-social personality disorder as set out by the Psychologist aforesaid. He will also need to be taught an employable

skill to enable him to earn a legitimate living on his release from prison. However I expect that this will be a long and arduous process.

SENTENCE

- [17] Mr. Mondesir for the Defendant has urged the Court to find that the Defendant's low intellectual functioning as stated by the Psychologist should be considered as a mitigating factor. In this regard he relies on the dictum of Morrisson JA in the decision of **Andrae Bradford v The Queen (2013) JMCA CRIM 17** at para 11:

"that the basic policy underpinning psychiatric or psychological illness as mitigating factor pivots on the idea that a person suffering from such an illness has a lesser moral culpability than those who are not suffering from this incapacity. It is also underpinned by the notion that persons should only be punished in accordance with their level of moral culpability ...where persons suffering from a psychiatric or psychological illness have a reduced capacity to choose and order their conduct then their capacity for full moral reasoning and judgment is impaired and this should be reflected in the sentencing of this cohort of offenders."

- [18] The Court is familiar with this decision aforesaid and having fully considered the report of the psychologist I do not find that the Defendant falls within that category of persons referred to in that decision. However, though the prognosis for improvement is bleak and the likelihood to reoffend is evident these are matters which could be addressed by a program or programs of rehabilitation, psychotherapy and occupational therapy.

- [19] In the decision of **R v Bancroft (1981) 3 CAR (S) 119,120**, Shaw LJ opined thus:

"Theoretically and logically, though in a sense remote from human affairs, if there is a successful defense of provocation, and it is recognized by the jury that the accused whom they are trying was not in possession of his self-control because of conduct of his victim, one could argue that the sentence should be virtually a nominal one. However, it has to be recognized in human affairs, notwithstanding that a man's reason might be unseated on the basis that the reasonable man would have found himself out of control, that there is still in every human being a residual capacity of self-control, which the exigencies of a given situation may call for. That must be the justification for passing a sentence of imprisonment, to recognize that there is still some degree of culpability, notwithstanding that the jury have found provocation."

- [20] I find that notwithstanding the provocation aforesaid the Defendant was still seized of that residual capacity for self control and could have taken steps to separate himself from the Deceased and

avoid another senseless homicide an offence which is prevalent in this jurisdiction. I have considered the personal circumstances of the Defendant and the facts of the case at bar. I have also found that the aggravating factors outweigh the mitigating ones. Thus a custodial sentence is inevitable .

[21] I will apply a benchmark of 15 years imprisonment from which I will deduct 5 years for the guilty plea. I do not find the delay so inordinate to warrant a further reduction in sentence. Accordingly the Defendant is sentenced to 10 years imprisonment. He shall be credited for all time spent on remand whilst awaiting his trial. He shall receive the appropriate counselling as recommended by the Psychologist.

FRANCIS M. CUMBERBATCH
HIGH COURT JUDGE