

SAINT LUCIA

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

CRIMINAL CASE NO. SLUCRD2012/0667

BETWEEN:

THE QUEEN

Claimant

and

MICHAEL EDMUNDS

Defendant

Appearances:

Mr. Leon France for the Claimant

Mr. Leslie Prospere for the Defendant

2016: December 16.

JUDGMENT ON SENTENCING

- [1] **CUMBERBATCH, J.:** The Defendant was indicted by the Director of Public Prosecution for the offence of Murder contrary to section 85(a) of the Criminal Code 2008 for that he on the 28th February 2012 at High Street in the Quarter of Dennery intending to cause death did cause the death of Llewelyn Gordon Alexander ('the Deceased'). At his arraignment the Defendant entered a plea of not guilty. However after much toing and froing he entered a plea of guilty to manslaughter by virtue of diminished responsibility. After the allocutus the court ordered a Pre-Sentenced Report and Psychiatric evaluation be prepared.

THE FACTS

- [2] On Monday 27th February 2012 the Defendant was at Abo's Bar by the Dennery Beach. He was involved in an argument with one Tarshe and was asked to leave the premises. At around

11:00p.m. he went to the B.H. bar and was involved in a conversation with the Deceased. At around 1:00 a.m. he was seen carrying a piece of bamboo. He shouted to the Deceased 'papa I killing you tonight'. He then struck the Deceased 4 times on his head with the bamboo after which he placed it in a gutter and left the scene.

- [3] The Defendant proceeded to the Denney Police Station where he told the police 'I just finish kill a man there by Mr. Artif if you all want to go and see him.' He later told the police that he asked the Deceased for money to buy bread and corned beef but the Deceased struck him with a stick and told him "move his ass from there". He saw a piece of bamboo and used same to strike the Deceased 4 times but was not sure on what part of his body he hit the Deceased. Dr. Stephen King who performed a Post Mortem Examination on the body of the Deceased found the cause of death to be brain damage secondary to blunt force trauma.

THE PRE-SENTENCE REPORT

- [4] The Defendant grew up with his parents who were banana farmers. They struggled within the limits of their small income to provide for him and his siblings. However the Defendant and his siblings were raised with good morals and values.
- [5] His mother stated that during the Defendant's late teenage years she observed signs of mental illness in him. As a result of his erratic behavior he was admitted to the Wellness Centre on several occasions. She further stated that the Defendant has caused her and other family members to remove from the family home. The Defendant was prior to the commission of this offence its sole occupant.
- [6] Community residents describe the Defendant as a good person who is not known for getting into flights or trouble. However some persons have expressed reservations about their safety after this incident. They opine that they feel unsafe with the Defendant who is mentally ill and killed someone for no reason.

- [7] Apart from the Defendant's mother no other family member has expressed their views of the Defendant nor has anyone offered assistance to him on his released from the Bordelais Correctional Facility.

THE PSYCHIATRIC REPORT

- [8] This report reveals that the Defendant has been a patient of the psychiatric services of this country since around the year 1997. He is diagnosed with schizophrenia and poly substance (cannabis and cocaine) abuse. At his last examination he displayed no psychotic features. The doctor further recommended that the Defendant continues to receive psychiatric care and antipsychotic medication.

THE LAW

- [9] A useful starting point would be to determine the aggravating and mitigating factors herein. I find that in the case at bar the court ought not to embark on a consideration of the classical principles of sentencing. The decision of the court in **S v Shapiro (1987) 1 SA 940** is most instructive on this point to wit:

"There can be no doubt that the community must view this crime with abhorrence. I do not believe however that right thinking men would demand condign punishment in a case where the accused acted with substantially diminished responsibility. I do not think that in light of the finding of diminished responsibility this case is one which is clamant for retribution."

- [10] I will however apply the principles of rehabilitation herein.
- [11] I find the following to be the aggravating and mitigating factors herein:

AGGRAVATING FACTORS

1. The attack on the Deceased was unprovoked and unjustified,
2. The severity of the attack,
3. The Deceased was unarmed and seemingly unprepared for the Defendant's attack,
4. The prevalence of the offence of homicide.

MITIGATING FACTORS

1. The Defendant's guilty plea,
2. The Defendant's mental health illness,

3. The Defendant is remorseful.

[12] After conducting a balancing exercise of the aggravating and mitigating factors I find that the aggravating factors outweigh the mitigating ones.

SENTENCE

[13] Section 90 of the Criminal Code provides:

- "1. If a person kills or is a party to the killing of another person, he or she shall not be convicted of murder if he or she was suffering from such mental disorder (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his or her mental responsibility for his or her acts in doing or being a party to the killing.*
- 2. On a charge of murder, it shall be for the defence to prove that the person charged is by virtue of this section not liable to be convicted of murder.*
- 3. A person who but for this section would be liable to be convicted of murder shall be liable to be convicted of manslaughter.*
- 4. The fact that one party to a killing is by virtue of this section not liable to be convicted of murder shall not affect the question whether the killing amounted to murder in the case of any other party to the killing.*

[14] The term mental disorder is defined in the interpretation section of the Criminal Code as;

"mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind, except intoxication."

[15] The psychiatric report reveals that the Defendant has been a patient of this country's psychiatric facilities since around 1997. This provides more than ample reason for the crown to accept the plea of diminished responsibility.

[16] The dictum of Leonard J in **R v Chambers (1983) 5 Cr. App. R (s) 190** is most instructive in the determination of an appropriate sentence to wit;

"In diminished responsibility cases there are various courses open to a judge. His choice of the right course will depend on the state of the evidence and the material before him. If the psychiatric reports recommend and justify it, and there are no contrary indications, he will make a hospital order. Where a hospital order is not recommended, or is not appropriate,

and the defendant constitutes a danger to the public for an unpredictable period of time, the right sentence will, in all probability, be one of life imprisonment.

In cases where the evidence indicated that the accused's responsibility for his acts was so grossly impaired that his degree of responsibility for them was minimal, then a lenient course will be open to the judge. Provided there is no danger of repetition of violence, it will usually be possible to make such an order as will give the accused his freedom possibly with some supervision.

There will however be cases in which there is no proper basis for a hospital order; but in which the accused's degree of responsibility is not minimal. In such cases the judge should pass a determinate sentence of imprisonment, the length of which will depend on two factors: his assessment of the degree of the accused's responsibility and his view as to the period of time, if any, for which the accused will continue to be a danger to the public."

[17] In **R v Slater** Auld LJ made the following observations:

"Assessing the form and severity of sentence in manslaughter cases by reason of diminished responsibility is notoriously difficult. So many factors often contribute to the death: the relationship of the parties one to the other, the strains if any imposed on the relationship, the degree of diminution of the defendant's responsibility or blameworthiness for the death by reason of his or her abnormality of the mind, the deliberation or otherwise of the fatal attack and the brutality with which it is conducted and the defendant's attributed to and/or appreciation of the enormity of what he or she has done. These and other factors invariably call for a balance of considerations between fixing on a disposal that reflects the moderating circumstances and their degree of the offence, differentiating it from murder, and those that identify nevertheless serious culpability, calling for mark by the Court of public disapproval and imposition of punishment."

[18] In the decision of Benjamin J (as he then was) in the **Queen v Andrew Kagan Richardson** the Learned Trial Judge undertook a distillation of the principles which ought to guide the sentencer in a case of diminished responsibility. He opined thus:

- i. the Court must obtain and take into account the expert medical reports and the presentence report;
- ii. The offender must be dealt with in the manner the Court deems to be most appropriate in all the circumstances of the case;
- iii. Consideration must be given to the seriousness of the offence;
- iv. Any possibility of the need to protect the public from serious harm by the offender in cases of violent (or sexual) crime must be considered;

- v. *The rehabilitation of the offender is to be treated as a primary objective of sentencing;*
- vi. *In appropriate cases, the Court can consider a non-custodial sentence;*
- vii. *The Court must weigh the likely effect of a custodial sentence on the condition of the offender and on the treatment of the offender;*
- viii. *The seriousness of the punishment must be commensurate with the gravity of the offence; and*
- ix. *The Court can impose a term longer than is commensurate with the seriousness of the offence including an indeterminate term where the protection of the public from serious harm the offender is in its opinion required provided that its opinion is so stated in open Court and explained to the offender in ordinary language.*

- [20] The Court is required to consider all the facts and circumstances of this case and assess the defendant's blameworthiness or culpability. In so doing the court must balance the seriousness of the offence with the effects of the mental disorder suffered by the defendant and accordingly determine the level of residual responsibility left in him. Accordingly his mental disorder though a mitigating factor does not absolve him of responsibility of his actions. The court must also consider whether the defendant poses a danger to the public.
- [21] The Defendant took the life of the unsuspecting Deceased who was 71 years old and well respected in the community. He received blows to the head by the Defendant with a piece of bamboo who thereafter went to the police and reported what he has done.
- [22] It is common ground that the Defendant is now on medication within the confines of a controlled environment. I find that his current situation contributes to his stable condition. Notwithstanding this however he still harbors the bizarre belief that in killing the Deceased he acted in self defence as he feels the Deceased would have killed him given the chance to do so.
- [23] I find in the circumstances that the Defendant's culpability is not minimal. Community residents consider him a threat to their safety and prior to this event the Defendant's family members deserted the family home leaving him to reside therein alone. This was as a result of him constantly throwing their possessions out of the house and frequent quarrels with family members. Indeed the Pre-Sentence Report is totally bereft of offers of assistance from any of the Defendant's

family members to see him through his rehabilitation and reintegration to the society. Accordingly I find the Defendant to be a danger to the community.

[24] Sections 1099 (3) & (5) of the Criminal Code 2008 provide thus;

"(3) Before passing a custodial sentence other than one fixed by law on an offender who is or appears to be mentally disordered, a Court shall consider—

(a) any information before it which relates to the offender's mental condition (whether given in a medical report, a pre-sentence report or otherwise); and

(b) the likely effect of such a sentence on that condition and on any treatment which may be available for it.

(5) In this section—

"medical report" means a report as to an offender's mental condition made or submitted orally or in writing by a qualified registered medical practitioner;

"qualified" in relation to a registered medical practitioner, means appearing to the Court to have special knowledge and experience of cases of mental disorder."

[25] Section 1100 (3) of the said Code provides thus;

"(3) Nothing in this Code—

(a) requires a Court to pass a custodial sentence, or any particular custodial sentence, on a mentally disordered offender; or

(b) restricts any power which enables a Court to deal with a mentally disordered offender in the manner the Court considers to be most appropriate in all the circumstances."

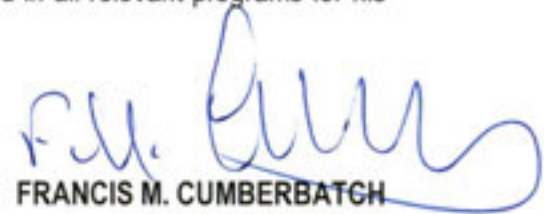
[26] Parliament has by the aforesaid provisions provided the court with a wide range of options in sentencing an offender who is mentally disordered. Regrettably however the court is unable to impose a hospital order because of the absence of secure facilities at the Wellness Centre. Hence the court must seek other options to ensure the safety of the community from another act of homicide by this Defendant.

SENTENCE

[27] Thus the Defendant will be held at the Bordelais Correctional Facility at the court's pleasure. He shall be held for at least 10 years before he is brought to the High Court for a review of his condition. He shall be released upon the Court being satisfied that he no longer poses a threat to

his family member and community. He shall also be placed under the supervision of a responsible adult person who shall ensure that he takes his medication as prescribed and attends outpatients clinic when required to do so.

- [28] He shall receive periodic visits by the consultant psychiatric at the Bordelais Correctional Facility who shall provide the court with annual reports of his progress.
- [29] He shall receive counselling for his drug use and shall be enrolled in all relevant programs for his rehabilitation.



FRANCIS M. CUMBERBATCH
HIGH COURT JUDGE