

SAINT LUCIA

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

CRIMINAL CASE NO. SLUCRD2012/2292

BETWEEN:

THE QUEEN

Claimant

and

CURTIS JOSEPH

Defendant

Appearances:

Mr. Stephen Brette for the Claimant
Mr. Alberton Richelieu for the Defendant

2016: December 16.

JUDGMENT ON SENTENCING

- [1] **CUMBERBATCH, J.:** The defendant was indicted by the DPP for the offence of murder for that he on the 15th November 2012 at Castries whilst intending to cause grievous bodily injury did cause the death of Colin Kim Peter (the deceased) contrary to section 85(b) of the Criminal Code 2008. On the 23rd May 2016 the defendant pleaded guilty to the offence of murder as indicted. The court ordered a pre-sentence report, psychiatric evaluation and psychological assessment to assist it in determining an appropriate sentence herein.

THE FACTS

- [2] On Thursday the 15th November 2012, the deceased and his wife who are Canadian nationals and were vacationing in Saint Lucia had visited the Cemetery at Vigie where they viewed tombs of the deceased family and snapped photographs.
- [3] Having finished the couple made their way to the Choc Cemetery through the footpath. They then sat under a big tree along the beach and had lunch.
- [4] After lunch they continued walking along the beach when they reached a stream which they tried to cross without removing their shoes. It was then that the defendant who was sitting nearby on a tree jumped from the tree to where the couple was standing. He landed near the couple and used a stick about 18 inches long to strike the deceased twice, first near his hairline, then to the back of his head. The deceased fell to the ground. The defendant then rolled the deceased over and pushed his hands into his pocket and took his wallet. The defendant made off with the wallet and a backpack which the deceased was carrying.
- [5] The pathologist Dr. Stephen King noted the cause of death as raised intracranial pressure. The pathologist also noted that intracranial hemorrhages secondary to blunt trauma to the head.

THE PRE-SENTENCE REPORT

- [6] The defendant had a difficult childhood. When he was two years old he was left by his mother in the care and custody of his maternal grandparents. At times there was no food to eat and on occasions he was subjected to cruel punishments from his grandparents for infractions at school. At age 10 he commenced staying away from home, sleeping on the streets on cardboard and under houses. He stole to provide food for himself.
- [7] Not surprisingly the defendant has been incarcerated from a young age, first at the Boys Training Centre then at the Bordelais Correctional Facility. Thereafter he was a victim of the proverbial revolving door syndrome in that he was in and out of prison for offences of dishonesty. He states that his parents showed little interest in him and he first met his biological father at age 15 at a

court hearing. They have never developed a relationship with each other. He is not allowed to visit his mother's home when her husband is present.

- [8] Both the defendant and his mother attribute his tendency to steal to evil forces. The defendant states that he diligently obeyed rituals imposed upon him by 'spiritual healers' to change his negative behavior but without success. His grandmother is of the view that unexplained supernatural forces are responsible for his criminal and anti-social conduct.
- [9] The defendant's children describe him as a good father whilst community residents consider him to be quiet and reserved. He is however reputed to be a thief. The defendant is a self-confessed drug addict who admits to mixing and consuming a concoction of cannabis and cocaine. He also consumes alcohol. He has expressed remorse and taken full responsibility for his actions.

THE PSYCHOLOGICAL ASSESSMENT

- [10] The court benefitted from a comprehensive report from the psychologist Ms. Nelson. In the summary of her psychological assessment she opined thus:

"Mr. Curtis Joseph is a 46 year old male with a mild to moderate degree of cognitive impairment. His general level of intelligence falls within the extremely low range of functioning. This suggests that the client is unable to proficiently execute most mental tasks. His low verbal comprehension score is also indicative of the client's inability to understand complex verbal information as well as express his own thoughts and ideas orally. It should be noted that Mr. Joseph's overall low intellectual functions place him within the diagnostic category of Mild to Moderate Mental Retardation. However, a conclusive diagnosis of this nature requires significant impairment in social functioning and adaptive behaviours along with low cognitive abilities. It is believed that over the years, Mr. Joseph may have acquire sufficient, functional, self-taught adaptive skills such as using a cell phone and paying utility bills, that excludes him from such a diagnosis. In spite of this, it is imperative that his poor intellectual capacity not be discounted."

- [11] The psychologist also found that the defendant suffers from substance abuse disorders, to wit, cannabis use disorders and stimulant use disorder, cocaine with perceptual disturbances. The defendant commenced smoking cannabis and using cocaine at an early age and despite several attempts he has been unable to discontinue their use. She feels it is probable that his substance abuse accounts for his behavior. She concluded her assessment of the defendant thus:

*"Based on the finding of this assessment, it is believed that Mr. Joseph suffers from **Substance Use Disorders** which should be given attention to reduce the risk of recidivism"*

*and to maximize the propensity for rehabilitation. Few traits associated with psychopathy were found which suggests that the client **does not** possess a psychopathic personality. It is likely that the client's low intellectual functioning and troubled childhood may have contributed to his substance abuse. It should further be noted that the client, Mr. Curtis Joseph, continues to display remorse for the incident in question. This therefore, may make him a possible candidate for a Victim-Offender Reconciliation Program.*

THE PSYCHIATRIC REPORT

- [12] The defendant was examined by Dr. Naomie Jn Baptiste who found no psychotic disorder. She too found that the defendant to be remorseful about his involvement in the death of the deceased. He displayed no hallucinatory behavior and his mood was euthymic. She recommended that he receives counseling for his anger management and refrains from using mind altering substances.

THE SUBMISSIONS

- [13] Mr. Richelieu for the defendant was quite candid about the character of his client. He conceded that the pre-sentence report paints a gloomy picture about his client's character and conduct. Counsel emphasized the fact of the defendant's remorse and that he has taken full responsibility for what he did.
- [14] Defence counsel submits that his client is a candidate for reform and rehabilitation. Though he is a common thief he is not considered to be a danger to the society nor does he possess a psychopathic personality. Counsel contends that the defendant can be readapted into society. In that regard he recommended a rigorous drug rehabilitation program to assist the defendant to disabuse himself of his compulsion and obsession with drugs.
- [15] Mr. Richelieu in his written submissions made a discrete point that though diminished responsibility does not feature in the case at bar, the sentencing court is not precluded from taking into account the defendant's lack of forethought which could have impaired his judgment. He refers to the defendant's admission to the psychologist that mere minutes prior to the incident he had ingested a drug.
- [16] Crown counsel Mr. France addressed the court on the classical principles of sentencing. He also submitted for the court's consideration authorities on sentencing in cases of homicide.

- [17] Mr. France opined that a protracted sentence together with the appropriate rehabilitation would be best for the Defendant. He further stated that the defendant seems more at home with the sound of the proverbial shutting of the iron cell door. He is a habitual thief who will stop at nothing to feed his drug addiction hence the society needs to be protected from him

THE LAW

- [18] I will apply the classical principles of sentencing to the case at bar.

RETRIBUTION

- [19] The deceased and his wife were foreign nationals visiting this country who took the opportunity to visit burial sites of deceased family members. The defendant was perched in a tree and not unlike a vulture pounced upon them and with a stick struck two blows to the head of the decd. He thereafter stole his wallet, camera and backpack.
- [20] This type of criminal conduct involves not only the loss of life but jeopardizes the success of the tourism industry upon which the economy of the country is heavily dependent. The court must show its intolerance and abhorrence of this type of criminal conduct by the sentence it imposes.

DETERRENCE

- [21] Though the defendant is a recidivist and may not be deterred by a lengthy prison sentence the court must also consider this principle in its general application. The court is aware of the increase of offences of homicide in this jurisdiction where for inexplicable reasons a human life is taken in a brutal and heinous manner. Thus a suitable sentence must be imposed to deter those who have trivialized the sanctity of human life from committing this offence.

PREVENTION

- [22] Notwithstanding the benevolent view of the community it is clear that this defendant will without hesitation cause loss of life and limb in his quest for money to feed his drug addictions. I find in his current state he poses a danger to the society. However robust rehabilitation should rid him of his drug addictions which are the triggers for his criminal conduct.

REHABILITATION

- [23] The defendant has spent a great deal of time at the Bordelais Correctional Facility but no mention is made of him undergoing any form of rehabilitation whilst incarcerated. Though he appears amenable to rehabilitation I find that that will be a long and arduous process.
- [24] The defendant has to be weaned off the dangerous drug regimen he has participated in since as a teenager. His literacy needs must be addressed together with his anger management issues. He must also receive occupational therapy to assist him in becoming a law-abiding citizen on his release from prison.

AGGRAVATING AND MITIGATING FACTORS

- [25] I find the following to be the aggravating and mitigating factors herein.

AGGRAVATING FACTORS

1. The senseless loss of human life,
2. The defendant is a recidivist
3. The prevalence of the offence.

MITIGATING FACTORS

1. The defendant's guilty plea,
2. The remorse expressed
3. The defendant's mental retardation.

- [26] I find after having balanced the aggravating and mitigating factors in light of the circumstances of this case that the aggravating factors outweigh the mitigating ones.

SENTENCE

- [27] Section 87(3) provides a maximum penalty of life imprisonment for anyone convicted of non-capital murder. A useful starting point in considering the law as it applies to sentencing in cases of murder to consider the applicable legal principles enunciated by Rawlins J.A. [Ag.] (as he then was) in **Mervin Moise and The Queen** Criminal Appeal No. 8 of 2003. Though the facts of that case concerned a case of capital murder I find the principles therein to be applicable here:

"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.... The sentencing Judge is fixed with a very onerous duty to pay due regard to all of these factors.

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."

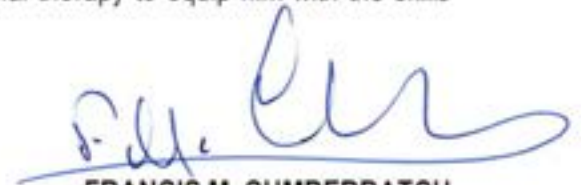
- [28] The dictum of Rawlins, J.A. was approved by the Board in the decision of **Leslie Pipersburg et al. v The Queen** P.C. Appeal No. 96 of 2006 from the Court of Appeal of Belize. In that decision Lord Roger of Earlsferry who delivered the decision of the Board added at paragraph 33:

'It is the need to consider the personal and individual circumstances of the convicted person and, in particular, the possibility of his reform and social re-adaptation which makes the social inquiry and psychiatric reports necessary for all such sentencing hearings

- [29] The court accepts that the defendant has had a difficult childhood which caused him to resort to stealing to survive. As an adult and a parent however his approach to life remained unchanged. Hence he has acquired the reputation of being a common thief who would do just about anything to obtain money to feed his drug addiction.
- [30] From all accounts it appear that the defendant has never benefitted from rehabilitation for his drug abuse and resorted to unconventional means to do so aforesaid. However this evidences the fact that he seemed uncomfortable with and sought to rid himself of his drug addiction. I must also take into account the findings of the psychologist that the defendant has a mild to moderate degree of cognitive impairment and that his general level of intelligence falls within the extremely low range of functioning.
- [31] The gravity of the offence committed by the defendant cannot be overstated. The person whose death he caused was a visitor to this country who was met with hostility rather than hospitality. The taking of a human life without lawful justification is the most heinous offence known to mankind. However this is not one of the worst cases of homicide herein. There was no excessive brutality inflicted on the deceased and the defendant from the time of his arrest was remorseful. In **Kenneth**

Samuel v R criminal appeal No. 7 of 2005 Barrow JA said that *'the Court must vindicate its abhorrence for this killing by imposing a deserved rather than an extreme sentence'*.

- [32] I shall apply a benchmark of 30 years imprisonment to the case at bar from which I will deduct 10 years for the guilty plea. The defendant's mild to moderate mental retardation though not reaching the threshold of a mental disorder would affect his forethought. I find that to be a mitigating factor for which I will make a further deduction of 2 years.
- [33] I do not consider the delay herein to be inordinate and deserving of a further reduction in sentence. Though the defendant is by no means a first offender I find that he has not benefitted from a program of rehabilitation to curb his recidivism.
- [34] Accordingly the defendant is sentenced to 18 years imprisonment. He shall be credited for all time spent on remand whilst awaiting his trial. He shall undergo programs of rehabilitation for his drug abuse and anger management. He shall receive occupational therapy to equip him with the skills for legitimate employment on his release from prison.



FRANCIS M. CUMBERBATCH
HIGH COURT JUDGE