

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

**ANTIGUA AND BARBUDA
CASE NO. 12 OF 2000**

BETWEEN

THEQUEEN

VS.

STEADROY McDOUGAL

Appearances:

*Mr. Anthony Armstrong, Director of Public Prosecution and Mrs. Shannon Jones-Gittens
for the Crown*

Mr. Sherfield P. Bowen for the Defendants

2016: September 19, 23 October 17, 21
November 3, 4, 18, 28

Criminal Law - Re-Sentencing - Murder - Conviction on Trial - Original Sentence of Death declared unconstitutional - Order of Re-sentence - Court's approach on re-sentencing - Application of normal sentencing principles - Considerations of aggravating and mitigating features - Appropriate Benchmark Sentence - Fixing a commensurate Sentence - Relevance of Delay on Sentence - Relevance of time spent on death row - Relevance of declaration of unconstitutionality of Original Death Sentence on Commensurate Sentence.

On the 10th of October 2000, the defendant, Steadroy McDougal was found guilty of the murder of two persons and he was sentenced to what was then regarded as the only possible sentence, a sentence of death.

Early on the morning of Christmas day 1998, a fire was started at the Navigator Apartments in English Bay, St. Paul's Antigua. Two bodies were later discovered in adjoining apartments, each on the respective beds of those apartments. It was revealed that these persons had been beaten with a hammer before the fire was started. One died of the injuries before the fire. The other died from the injuries and the effects of the fire. Investigations led to the arrest of the defendant who in a written statement denied this offence. Shortly after he admitted in an oral statement to setting fire to the bodies and the building but at the trial denied ever making this statement. The prosecution case was that he had been involved in a stormy relationship with the deceased Torrens for several

months. She had broken off this relationship and evidence showed that the defendant who had been violent to her stalked her and was seen during Christmas Eve's night at one of the places where the deceased Torrens and the deceased Melius and a friend were spending time. The three of them were 'bar crawling' that night and much of it was spent consoling the deceased Torrens who was crying on and off that night over her relationship with the defendant. It appeared that the deceased Torrens was very friendly with Melius who she had met after she broke up with the defendant. The defendant initially effectively told the police that he was nowhere near English Harbour but was in town liming.

Upon his conviction and sentence of death, he was placed in maximum security in the prison. No steps were ever taken to execute the defendant, but he spent some 15 years in maximum security partly because of his general behavior and the fact that he had escaped once in 2002. Just in 2015, an assessment was made by the incoming superintendent of prisons that his risk level had been reduced and he was placed in general population. In 2014, the State filed proceedings to regularize his status in prison and the His Lordship Justice Cottle declared that the original sentence of death was unconstitutional and was accordingly quashed. It was also ordered that he be re-sentenced for the crime.

At this re-sentencing hearing it was argued that this was a case in which a sentence of life imprisonment was not appropriate having regards to not only the offence and the offender, but also having regard to the length of time which had elapsed.

Held: The defendant is sentenced to a term of life in prison with a review after 35 years in accordance with section 3B of the Offences against the Persons Act, Cap 300, for the following reasons:

1. A court engaged in a re-sentencing of a prisoner who has been held for years under an unconstitutional sentence and whose conditions of imprisonment may have amounted to cruel and unusual punishment, may, preferably first approach this exercise in the normal way. Such an approach would entail that the court apply those common law principles of sentencing of retribution, deterrence, prevention, rehabilitation and even restoration in arriving at a commensurate sentence. In this regard, the court must have regard to circumstances of the case in the round, the offence and the offender having regards to the progress he has made over the years, and evaluate those aggravating and mitigating features of the case. When this is done and a notional commensurate sentence is arrived at, the court must then consider those matters, the delay and the other complaints of violations of the offender's constitutional rights. The court must consider what mitigating effect, if any, any proven violations of the offender's rights, would have on the sentence.
2. The statutory review provisions of Antigua and Barbuda in the context of the regional sentences for the offence of murder provides a useful tool in the sentencing for serious offences. It recognizes that in particular instances, the level of violence involved may indicate that rehabilitation and other public interests will require that the offender be imprisoned for an indeterminate life sentence or fixed extended sentence to cater for these imponderables which are (a) primarily dependent on the defendant and (b) matters outside of the punitive element of the sentence. The section provides the court with the statutory mechanism to assess many years after the original sentence, violent offenders and their

suitability to be returned to society. In these types of cases, the court is quite capable of fixing a tariff or minimum period which would represent the punitive period which then triggers the review phase of the sentence.

3. An examination of this offence and the offender, aggravating and mitigating features informs that this is a case in which an indeterminate life sentence is indicated. This offence involved multiple killings. The manner of the commission of the offence was extremely brutal and violent. It was clear that this defendant intended to kill both of these persons having regards to not only the multiple blows he struck with the hammer but also that he placed them on their respective beds and then set them afire. A commensurate minimum punitive term for this offence is 35 years;
4. The imposition of a sentence of death without affording the defendant an opportunity to be heard in mitigation breaches a person's right to a fair trial as is guaranteed. This breach was aggravated when this sentence remained over the head of this defendant for all the years he was in prison even though it seems that all and sundry may have known that he could not be executed. The imposition of such a sentence was also in breach of the guarantee against inhumane treatment. These breaches were serious breaches. It has now been 18 years since he was unlawfully sentenced to death. Only now is this being corrected.
5. This court exercising its criminal jurisdiction must really consider whether these breaches ought to have the effect of mitigating this sentence, not whether it should exercise constitutional powers to provide for all manners of remedy. In light of the gravity of this offence and more so the fact that I have found that this defendant is to be considered dangerous, this court will follow the guidance in *Rummun* and decline to allow these breaches to mitigate the appropriate sentence.

DECISION

- [1] **RAMDHANI J. (Ag.)** This is a re-sentencing exercise commenced by this Court on the 19th September 2016. At the end of the hearing, a sentence of life imprisonment with a review after 35 years in accordance with section 3B of the Offences against the Persons Act, Cap 300, was considered in all of the circumstances of this case to be the appropriate sentence with regards to the defendant for the reasons now set out.
- [2] On the 10th October 2000, the defendant, Steadroy McDougal was found guilty of a single charge of murder which involved the killings of one Louise Torrens and Mitchel Melius.

- [3] On that same day in October 2000, he was sentenced to death and placed in the maximum security wing of the prison. Nothing was ever done to carry out his sentence but he remained on the prisons records as a man under a sentence of death.
- [4] In 2002, in jurisdictions with similar statutory and constitutional provisions, it became recognized that the imposition of a sentence to death as matter of course without the benefit of any mitigation hearing was contrary to the Constitution. Nothing happened in relation to this defendant until 2015, when the then Honourable Attorney General took matters in hand and on behalf of this defendant and six others who were similarly being held under their original sentences of death, filed a claim in the High Court for orders that the sentences of death which had been imposed as a matter of course as a mandatory sentence was unconstitutional. On the 4th June of 2015, Justice Cottle granted the declaration which was sought and ordered that this defendant and the others were to be re-sentenced by the High Court at the earliest opportunity.
- [5] When this matter came on for re-sentencing this defendant had spent just over 16 years in prison, ten of which was spent in maximum security. It also seemed that when notice was sent out to him in September 2016 to attend to his sentencing hearing, he had not yet been informed of the order made by Justice Cottle. It also became clear that even the prison authorities had not been formally notified of the order and records of the prisons continued to reflect the defendant was under a sentence of death.

The Facts

- [6] Early on the morning Christmas day 1998, a fire was started at the Navigator Apartments in English Harbour, St. Paul's Antigua. Two bodies were later discovered on the beds in two adjoining apartments. It was revealed that these persons had been beaten with a hammer before the fire was started. One died of the injuries before the fire. The other died from the injuries and the effects of the fire. Investigations led to the arrest of the defendant who has consistently denied this offence even today.

- [7] The prosecution case was that he had been involved in a stormy relationship with the deceased Louise Torrens for several months. She had broken off this relationship and had moved in to live with a friend, one Mary Stewart, who had extended an invitation seeing bruises on her arms and legs. Days before the fatal night, the defendant turned up at Stewart's home and demanded that Torrens return to him. On one occasion he had also forcibly removed her from Stewart's vehicle and pushed her into his van. Stewart herself became concerned for her own safety and asked Torrens to leave. Torrens then moved into the Navigator Apartments at English Harbour.
- [8] Just around this time, Torrens became friendly with Mitchel Melius who was also staying in an apartment adjoining hers at Navigator Apartments. The two were seen together from time to time during those early days in December 1998.
- [9] The defendant continued to stalk her. The deceased Torrens was seen distressed and often crying during the few days leading up to the 25th December 1998. The defendant was seen during Christmas Eve's night at one of the places where the deceased Torrens and Melius and a friend were spending time. The three of them were 'bar crawling' that night and much of it was spent consoling the deceased Torrens who was crying on and off that night over her relationship with the defendant. It appeared that the deceased Torrens was very friendly with Melius who she had met after she broke up with the defendant.
- [10] On the evidence led before the jury, the inferences most favourable to the defendant were that after he followed them that night he accosted both persons on the outside of the apartment and attacked them with the hammer inflicting fatal injuries and killing one almost immediately. The other one was critical after the attack. He then placed the bodies in the respective rooms and set fire the apartment building to conceal his crime. He attempted to get away with his vehicle but the vehicle ran out of gas in the nearby village. The jury would have accepted that he was seen shortly after in a nearby village on foot and carrying two empty bottles to buy gas for his stranded vehicle. The taxi driver who stopped for him gave this evidence saying that he knew him for years and that he took him to and fro to buy gas. When he was arrested by the police he told Assistant Superintendent of Police

Albert Smith that the next day, he lied to the police that he was even near English Harbour and failed to mention that he had run out of gas and had taken a taxi. Independent evidence put his vehicle in English Harbour late that night. He maintained at his trial that he was nowhere near English Harbour that night. The prosecution also led evidence from a senior police officer that after he gave that written statement, he admitted in an oral statement that he had he had been responsible for burning the bodies and the building. He denied making this statement at the trial. He was found guilty as charged.

The Mitigation Hearing

- [11] The evidence considered at the mitigation hearing included the testimony of several witnesses, two pre-sentence reports from the probation department dated the 26th and the 28th of October 2016, which included a victim impact statement, a medical report from Dr. Leyland Powell dated June 13, 2013, a report from then Acting Superintendent of Prisons dated 20th June 2013 and a report from the Reverend Canon Emerson Richardson, Chaplain of Her Majesty's Prison dated the 20th June 2013. A psychiatric evaluation was done was by Dr. James A. King. Two reports came from him. The Court also received and considered sentencing guidelines from the Crown and written submissions from Mr. Bowen.

The Pre-Sentence Report - Steadroy McDougal

- [12] At the date of sentencing the convicted man was presented to this court as a 48 years old man from Potter's Village who has been in prison since 1998 for this offence. He was 30 years old at the date of the commission of the offence. He is the father of four children, their ages ranging from 19 to 24 years. The court was informed he continues to have a relationship with his children who visits him annually during the Christmas season.
- [13] The defendant has now been incarcerated for about 18 years. He spent most of that time in maximum security only being allowed into general population in 2015 when the incoming superintendent of prisons assessed that his risk level had been reduced. Part of the

..

reason he had been kept in maximum security was his general behavior and the fact that he had escaped the prisons. He was recaptured in Potters Village where he had gone to see his children. He claimed that he had escaped because he was innocent of the offence.

[14] The report informed that during his years in prison, he has managed to learn a new skill, repairing small appliances.

[15] Before this offence was committed, the defendant was self-employed as a vendor selling souvenirs to tourists.

[16] The report briefly speaks to the defendant's childhood years informing the court that he got the benefit of parental supervision during his early years but that he failed to complete secondary school. His childhood was otherwise normal and as a youth he was not seen as violent or aggressive. Community members did speak of him as being a deceptive young man who earned the nickname 'Fox'. Some did speak to him having an aggressive nature as a man in the community. The view was expressed that he was a hardworking man who provided for his family and loved his children.

[17] The mother of the defendant's children spoke unfavourably of him. She has moved on with her life and is now married to another person. She stated that her relationship with the defendant had many challenges as the defendant was unfaithful throughout the period of the relationship. She also encountered bouts of hostility and disrespect from him, some even after he was incarcerated. His children were adversely affected by his incarceration and removal from their -lives. Some off his children, however, have expressed the view that they are apprehensive about his release and his return to the community.

**2013 Report from the Acting Superintendent of Prison and Oral Evidence from
Current Prison Superintendent**

- [18] A 2013 report from former superintendent Percy Adams, a report from Reverend Canon Emerson Richardson, the Chaplain at the Prisons, in 2013, and a report from the Prisons' Medical Officer were admitted by consent.
- [19] The Reverend Richardson spoke of the defendant's assertions that he had been falsely convicted and that there had been a conspiracy surrounding his trial, he claiming that he had evidence which showed that he was not at the scene at the time and further that there had been legal misrepresentation on his behalf at the trial.
- [20] The 2013 Report from Mr. Adams describing the defendant as being an 'angry prisoner' who continues to assert that the system has failed him. Mr. Adams does say in his report that the defendant's behavior has seen some improvement.
- [21] The current superintendent of Prisons Mr. Albert Wade gave oral evidence. He stated that when he took on his role in November 2014 he reviewed the defendant file and noted that the defendant continued to be listed as a man who is under a sentence of death.
- [22] He stated that from those records it is indicated that the defendant has had three infractions, one for escaping soon after he had been convicted, and two others for contraband. Up until 2014 the defendant was kept in the maximum security wing of the prison. The Superintendent described in that wing of the prison as comprising 25 cells, each measuring 6 feet by 4 feet. The prisoners in those cells are also on lockdown for 23 hours a day being released for recreations and hygienic requirements. No inmates in this section are allowed to participate in general activities in the prison.
- [23] The Superintendent states the defendant was removed from maximum security in 2014 after he was assessed as a lower risk level. He was given approval to go into the Prison's Electrical Shop which at the time was closed. This officer states there has been no issues with the defendant since he was placed there and even his behavior has changed though he continues to be 'argumentative'.

•

[24] The Superintendent stated that there were no issues related to violence from this defendant but accepted that 'it was difficult ...to assess whether society would be safe upon his release'.

[25] The officer accepted that also that whilst the defendant was listed as being a man under a sentence of death, this record was basically a 'misnomer' as he was aware that once prisoners had spent five years on death row, the sentence of death could no longer be carried out.

The Psychiatric Report

[26] A psychiatric examination of the defendant was conducted by Dr. James A. King. A report dated the 13th October 2016 was presented to the court and was by consent admitted into evidence. It was the opinion of the doctor that at the evaluation of the defendant, no present or past history was elicited for symptoms consistent with any anxiety, effective or psychotic disorder. He was competent and had no relevant medical issues.

[27] The doctor stated that his insight, judgment and impulse control were adequate during the evaluation. Further along the doctors that nothing was elicited from the defendant which suggested that he was a person who was aggressive or violent. He was considered as being competent to participate in his sentencing hearing. It was opined that his risk of reoffending was moderate.

The Impact of the Offence on Surviving Relatives

[28] At the request of the court, a family impact statement was contained in the pre-sentence report. The probation officer was unable to make contact with family members of the deceased Torrent.

- [29] A brother of the deceased Melius was contacted. He is currently enlisted in the Antigua and Barbuda Defence Force and holds the rank of Warrant Officer. He stated that the murder of his brother on Christmas day in 2000 caused the family to become distraught. The report informs that the parents of the deceased were at the time of the murder, residing in the USA and were unable to return to Antigua for the funeral because of their immigration status. This brother stated that the passage of time has eased the distress of the family and generally the family are now better able to cope emotionally. The family was satisfied with the outcome of the matter.

THE SUBMISSIONS ON BEHALF OF THE DEFENDANTS

- [30] Mr. Bowen's initial approach was seemingly to challenge the evidence which led to the conviction and he attempted even now to assert his client's innocence. The defendant himself wrote a long letter to the court, copied to aUsides, in which he asserted what he has been maintaining all these years that he is innocent and that he was badly represented at trial and told to lie by his lawyer.
- [31] The Court made it quite clear that it could not entertain any challenge to the jury's verdict in this matter. This Court is only concerned with the sentencing of this defendant. In any event, an examination of the record of the trial shows that there was a sufficiently compelling circumstantial case against this man that grounded the jury's verdict.
- [32] Mr. Bowen then moved on asking the court to consider that the aggravating features in the case did not warrant a life imprisonment and that a fixed term should be imposed, in the all the circumstances of this case.
- [33] Learned Counsel furthered bolstered these arguments along lines which were similar to those made in the Harris and Joseph matter. He contended that apart from the delay, the defendant had suffered in uncertainty over his fate for many years, and in fact continued to remain under a death sentence for all intents and purposes until he was recently notified that the death sentence had been quashed and a new sentence was to be imposed. All

these circumstances learned counsel argued, should result in a determinate fixed term of imprisonment which would realize in early release from prison. To date the defendant has spent some 16 years in prison for this offence.

The Court's Approach on the Sentencing

- [34] As with the other re-sentencing exercises which engaged this court during these Assizes, this was matter arose from an Order of the Constitutional Court made on the 4th June 2015 which declared the original sentence of death which had been imposed on this defendant was an unconstitutional sentence and directed the High Court proceed to impose a sentence on this defendant for the crime for which he had been found guilty in October 2000. This court therefore is proceeding as a criminal court involved in a sentencing exercise and may exercise all the powers of such a court.¹
- [35] In the usual way, a court in Antigua and Barbuda tasked with the sentencing of a criminal offender, must approach the matter having regards to the common law principles of sentencing, considering both the offence and the offender as he presently stands before the court. The court must have regard to all of the aggravating and mitigating features that would ordinarily fall to be considered. This would the normal way lead the fixture of a commensurate sentence. In this case, having arrived at this sentence, the court will go on to consider whether the extraneous matters would also have a mitigating effect on the sentence.
- [36] Turning then to this case, it is accepted that the prescribed and discretionary death penalty is not relevant in this sentencing exercise, and that the maximum penalty which may be considered for this offence is a discretionary term of life imprisonment. Under the common law a sentence of life imprisonment means imprisonment for the whole of the natural life of

¹ See for a similar approach the decision in *The Republic of Malawi v Njiratenga Banda*, Homicide Sentencing Re-Hearing No. 8 of 2015

the prisoner, so much so that even if a prisoner is released on licence this sentence continues to remain on him until his death.²

[37] In deciding whether sentences of life imprisonment or lesser fixed terms are appropriate in this case in relation to this offender, this Court, in the absence of any statutory scheme is guided by the common law principles or aims of punishment³ including retribution, deterrence, prevention, rehabilitation and restoration. It is these principles that will inform this Court's determination as to what is a commensurate and appropriate sentence in this matter. It will further inform the court whether in any given case which of the sentencing principles will take precedence so that for instance in a given case, a commensurate sentence may well be a sentence which rests more firmly on retribution than on rehabilitation. This court has also considered the sentences which have been imposed for this offence by reference to a number of local and regional cases.

1. In **Berthi H Fox v R** Criminal Appeal No. 40 of 1998, the appellant killed his fiancée and her mother in cold blood. He was sentenced to two sentences of life imprisonment. On appeal these sentences were confirmed but ordered to run concurrently.
2. In **R v Avie Howell and Kaniel Martin** Criminal Case Nos. 29 and 30 of 2010, the defendants shot and killed three persons in July and August of 2008. The first two were a newlywed couple from the United Kingdom honeymooning in Antigua. The defendant had broken into their cottage and robbed and killed them. The third person was a shopkeeper who they also robbed and killed at her home. They were given three consecutive life terms on conviction.
3. In the St Kitts' case of **Nardis Maynard v R** Criminal Appeal No. 12 of 2004 SKN, the appellant was convicted of the murder of one Henry committed during

² See *R v Foy* (1962) 48 Cr App R 290; *R v Norton* [2001] All ER (D) 92 (May)

³ *Desmond Baptiste v R* Criminal Appeal No. 8 of 2003

an unprovoked attack on the street and sentenced to imprisonment for life. He was 22 years old at the date of the offence.

4. In another St. Kitts case of **Kamal Liburd and Jamal Liburd v R** Criminal Appeals Nos. 9 and 10 of 2003, two brothers aged 24 and 20 years respectively, were convicted of murder and manslaughter. Kamal was convicted for the offence of murder and was sentenced to life imprisonment, and Jamal was sentenced to thirty years for the offences of manslaughter.
5. In the Grenadian case of **Lyndon Lambert v R** Criminal Case No. 57 of 2003 the appellant who was 20 years old at the time of the offence was convicted of murder and was sentenced to life imprisonment.
6. In the St. Vincent and Grenadines case of **David Roberts v R** [2009] ECSCJ No. 146, an appeal against a sentence of life imprisonment was dismissed. The defendant had raped and killed defenseless 75 year old lady.
7. In the St. Lucian case of **Curvin Jeremiah Isaie v R** Criminal Appeal No. 6 of 2006 the appellant a member of a gang shot and killed a young man. Even though he was considered as having previous good character he was sentenced to life imprisonment.
8. In the Antigua and Barbuda case of **R v Jay Marie Chin** Criminal Case No. 31 of 2011 the defendant was sentenced to life imprisonment for murder. She and the deceased were divorced after a long marriage. Even so they continued to operate together a business they jointly owned. One evening she shot him multiple times in the store killing him.
9. In another local case, **R v Lasana Riley and Jevorney Richards** Criminal Case No. 11 of 2012, both defendant were found guilty of murder and

sentenced to life imprisonment. The defendant lured the victim into an area and tried to rob him shooting and killing him.

10. In the Antigua and Barbuda case of **Rudolph Lewis v R** the Court of Appeal substituted a term of twenty five years for life imprisonment in a case where the appellant had stabbed his 21 years old common law wife because he suspected that she had been unfaithful to him on numerous occasions. He stabbed her 21 times with a penknife. The court of appeal found that the sentencing court had failed to have regard to the fact that the appellant was acting under circumstances of domestic emotional stress which was a significant mitigating feature. It was also found that sufficient weight had not been given to the 'strong personal circumstances' of the appellant and to a failed attempt to plead guilty.
11. The **State .v. Shane Degallerie** Criminal Case No. 13 of 2011 (Dominica) (Unreported) the Defendant who perpetrated an unprovoked attack on his friend was sentenced to 18 years.
12. In another local case, **R v Edwin Gomez, Kayvin Benjamin and Isaiah Benjamin** Criminal Case No. 66 of 2012, all of the defendants were found guilty of murder. The defendants armed themselves and attempted a robbery but were foiled. As they escaped one of them fired a gratuitous shot towards onlookers and killed a man simply walking on the road. Gomez was sentenced to 30 years, with a review after 23 years. Kayvin and Isaiah Benjamin were sentenced to 25 years with a review after 18 years. Gomez was 19 and Kayvin was 24 and Isaiah 22 years old at the time of the offence.
13. I have also noted the local case of **R v Smelin Pascual Arturo aka Pucho Pervata Doren** Criminal Case No. 34 of 2008 in which the defendant was sentenced to 15 years after being found guilty of murder.

- ..
- [38] These cases show how best the courts have fashioned sentences for murder. No doubt they make it very clear that a sentence of life imprisonment would be appropriate where 'considering the matter in the round *including the individual circumstances of the offender and the offence, punishment and deterrent*' dictates that such a sentence is a *commensurate sentence*⁴. These case also show the range of sentences which have been imposed for this offence both locally and regionally.
- [39] These cases indicate a general range for this offence; sentences range generally from 18 years (dipping even below this in exceptional cases) to 35 years to even life imprisonment. Here in Antigua and Barbuda, the section 3B of the Offences against the Person Act, Cap 300 provides a 20 years and 30 years minimum review periods for this offence. In my view, these minimums are not fixed in stone as even local courts have demonstrated⁵. In my view, a broad range for this offence whether it is in fixed terms sentences or setting review dates is a range of 18 to 35 years extending below and above these numbers in exceptional cases.
- [40] Section 3B also provides the court with useful statutory scheme to ensure not only that violent crimes are properly punished but also that offenders have a real motivation to seek rehabilitation, and that violent offenders are not released if they are not sufficiently rehabilitated or deemed to be dangerous on the expected date of release.
- [41] The statutory review provisions of Antigua and Barbuda in the context of the regional sentences for the offence of murder, addresses this sentencing aim. It recognizes that in particular instances, the level of violence involved indicates that rehabilitation and other public interests may require that the offender be imprisoned for an indeterminate life sentence or fixed extended sentence to cater for these imponderables which are (a) primarily dependent on the defendant and (b) matters outside of the punitive element of the sentence. The section provides the court with the statutory mechanism to assess many years after the original sentence, violent offenders and their suitability to be returned to

⁴ David Roberts v R Criminal Appeal No. 8 of 2008

⁵ See also R v Selassie; R v Pearman - (2014] 2 LRC 511

society. In these types of cases, the court is quite capable of fixing a tariff or minimum period which would represent the punitive period which then triggers the review phase of the sentence. None of the regional cases make it obvious that in the usual case 'life termers' may never be released. Those life terms were all imposed soon after the offence. Many of these territories have reducible schemes in place which provides an opportunity for release. It would seem that where legislation provides for the court to be engaged in the review it assures that the sentencing process would not be afflicted by executive transgressions.

[42] Being guided by the principles and the experience of the law, I turn to consider this matter.

The Aggravating Factors of this Case

[43] There are a number of aggravating matters in this case.

[44] This is a case of multiple murders even though charged as one offence. They were both killed at their places of residence just as they were returning home from a festive night unsuspecting that their death was imminent.

[45] This would have been a brutal attack with a hammer on both these persons, and it is clear to this court that the defendant intended to kill them. From the evidence, there is an irresistible inference that the attack began on the outside of the apartments and he followed at least one of the victims inside where he continued his attack with the hammer.

[46] There is an irresistible inference that there was some degree of premeditation as he followed the victims that night.

[47] It is also aggravating that after he would have inflicted fatal injuries on one of them and near fatal on the other, he then moved their bodies and placed them on their respective beds and then lit their apartments on fire to destroy all traces of his crime.

- [48] The defendant had been involved in a relationship with the deceased Torrens and the jury must have been satisfied that he was abusing her.

Mitigation

- [49] I turn to consider the mitigation in this case. First, the defendant was a young man in his thirties at the time of the offence. Though there were some convictions against him, they were not related to violence and this court would regard him as a man of previous good character.

- [50] The defendant has never accepted his role in this crime. He has denied it at all times. While he has stated that he is 'sorry' that the victims died that night. This court do not find any remorse. It does not aggravate the offence, but it equally does not provide any mitigation.

- [51] There are no other matters in this case, (as this court is not satisfied that he is even rehabilitated,) which in the normal way would go to mitigation except those extraneous matters being complained of. These include the unconstitutional sentence of death which had been imposed on him, and the fact that there has been a delay of some 16 years before a lawful sentence would be imposed on him for this crime. As noted before, this court would fix notional sentence without regards to these extraneous matters. Once such a notional term is fixed, the court would consider what effect those matters would have on the sentence in the circumstances of this case.

The Appropriate Sentence

- [52] This was a brutal crime. It occurred on Christmas day in 2000 when all the world was supposed to thinking only of good things and looking forward to a new year. Whilst the world was celebrating the virtues of all good things, this man was planning murder.

- [53] The deceased Torrens had terminated their relationship. It had been a violent relationship. And after she had left, he tormented her, following her around. He followed her that night and must have grown very angry about her being in the company Melius. But he must have also seen that she was not happily enjoying the festivities; she was crying that night and had to be consoled.
- [54] He waited until they had left the last bar they had visited and then he accosted them armed with his hammer. From the blood spots outside the apartments, it is clear that the attack began there. This must have been a frenzied attack. He chased one or both of them into one of the apartments where he continued his onslaught. When he was done with the hammer, he then placed their bodies on their respective beds in their respective apartments.
- [55] He then took some kerosene which he found near to the apartments and set the building ablaze to hide his crime and destroy the bodies. Then he made his escape. But fate caused his car to run out of gas just as he left. This single co-incidence must have been the crucial element of this case.
- [56] This is a shocking crime in many respects. Society's disgust and abhorrence must be reflected in a serious punitive sentence. His previous good behavior, regards being given to him as he now stands, will weigh little in mitigation having regards to the seriousness of this crime. Jealousy or hurt coming out of a broken relationship may never be used as a mitigating feature. People who find themselves in these situations must move on and there is nothing in any pain which ensues which may operate as mitigating.
- [57] I have examined many of the cases in this region, and in my view an appropriate sentence must be a sentence of life imprisonment. I have given consideration to what must be a punitive portion of this sentence. This is even more important in this case as this man has already spent some 16 years in prison for this offence. Having regards to all of the matters (excluding the extraneous matters) in this case, it seems to me that a term of 35 years would represent that element of the sentence.

[58] In this case, I have also considered from the evidence from Dr. James A. King related to this defendant's risk of dangerousness to the public. It was admitted by consent. This court also noted the general underlying tenor of the pre-sentence report and this court is satisfied that this offender should also be continued to be detained until he can demonstrate that does not continue to be dangerous to the public. It hardly needs to be said that any review will have to make an assessment of this. Where the punitive element of his sentence ends, he shall be reviewed for dangerousness at intervals of two years.

[59] An appropriate sentence therefore would be a sentence of life imprisonment with a review under section 3B of the Offences against the Persons Act, Cap 300, at the expiration of 35 years. If when the punitive period ends, he continues to be dangerous and remains under his life sentence, he shall be reviewed at intervals of two years for all dangerousness and other matters under section 3B.

[60] I now turn to consider whether the extraneous matters would mitigate the sentence in this case.

The Unconstitutional Sentence and the Delay Factor - Extraneous Mitigating Features

[61] Mr. Bowen, as in the cases of R v Harris and Joseph the R v Mason both his written and oral submission have urged this court should have regard to the fact that there was an unconstitutional sentence originally imposed on this offender and that there has been a substantial delay in bringing certainty to this defendant status in prison. Though, in this matter the delay has not been as long and steps had never been taken to carry out the sentence of death as it had been on the other matters, Mr. Bowen has nonetheless urged the court to approach the matter in a similar way as these breaches in this case were also significant.

- [62] The court does agree that these matters are serious. The fact that a sentence of death was imposed on this man without any mitigation hearing was a breach of his right of a fair trial which included that right to be heard at the sentencing stage of the trial. The fact that he has remained all these years under that sentence of death must be viewed as an aggravation of that breach.
- [63] As I noted in other matters it is difficult to understand how this man and others who were re-sentenced recently, were kept for so long without any steps being taken by the State to put things right before 2014 when the Attorney General applied for orders to quash the death sentence. That was commendable but that was an obligation that the State was under as it was not necessary that this man seek to put that right. The State held him under that sentence which was unconstitutional and they had a duty to correct this earliest.
- [64] These matters also amounted to inhumane treatment. It was suggested that all must have known that these sentences and others would not be carried out as Reyes overtook the region. Notwithstanding the mere fact that he was kept under a sentence of death, must have been an agony even in some little way. It is appropriate that I refer to the words of Chief Justice Conteh of the Belize Court of Appeal in *Harris v The AG of Belize* Claim No. 339 of 2006 speaking of a man being prisoner being under an unlawful sentence of death. He said at paragraph 11, *"It is no leap of the imagination or creative thinking to conclude that to have the prospect of the hangman's noose over a person's head for so long a period (over eleven years) is especially tortuous and inhuman punishment and treatment."*
- [65] The Prosecution, through the learned Director of Public Prosecution asked to address the Court on this matter, stated that these were matters to be considered but that in the circumstances of this case they should have little weight in the appropriate sentence to be fixed.
- [66] As in the *Harris and Joseph* matter, the learned Director in dealing with the delay of some 18 years asked this court to treat it as having little effect on any commensurate having regard to the exceptionally serious nature of this offence. As he did in other matters, he

relied in *Rummun v The State of Mauritius* [2013] UKPC 6 in which there had been a delay of some 9 years before the defendant was tried and sentenced. It was held that where there had been a breach of the right to a fair trial within a reasonable time was a matter to be taken into consideration by the sentencing court even if it not raised. The court held however that whether the sentence would be affected would depend on the circumstances of each case. The Board stated:

"A breach of that right will always be a factor to be considered in deciding upon the appropriate disposal. In some instances it may not be a factor of great weight and there may even be cases in which because of the strength of the countervailing factors such as the gravity of the offence, it will be accorded no weight at all. But it will always be a factor to be considered.,,

[67] The manner in which the defendant has been treated by the State is largely inexcusable. No person should have been kept for this length of time under this unconstitutional sentence of death. As the Caribbean Court of Justice stated not so long ago: ¹¹ *the Constitution affords even to persons under a sentence of death, rights that must be respected and that the true measure of the value of such rights is not just how well they serve the law-abiding section of the community, but also, how they are applied to those for whom society feels little or no sympathy.*"⁶

[68] Courts have also been prepared to reduce sentences where an unconstitutional death sentence has been imposed.⁷ So too, a sentence would be mitigated where there has been a substantial delay in correcting an unlawful sentence.⁸ In one case, a regional constitutional court has even been prepared to grant compensation⁹. Whether a court is exercising all of the powers under section 15 of the Constitution to fashion a remedy or as a criminal case considering whether to mitigate a sentence in these cases, the court must take into account not only the violations but also the nature and gravity of the offence as well as the public interests. For the constitution court, these considerations will guide whether an appropriate remedy would be, on the one end of the scale, a public

⁶ *Attorney General et al v Jeffery Joseph and Lennox Boyce*

⁷ *Rummun v The State of Mauritius* [2013] UKPC 6

⁸ *Coard and others v Attorney General of Grenada* (2007) 69 WIR 295; *The Queen v Callistus Bernard and others -* [2007] ECSCJ No. 250; *The Republic of Walawi v Njiratenga Banda, Homicide Sentencing Re-hearing* No. 8 of 2015

⁹ *The AG of Trinidad and Tobago v Angela Ramdeen* Civ. App. No. 6 of 2004

acknowledgement of the violation, and on the other end of that scale a reduction of the commensurate sentence or possibly even compensation.¹⁰

[69] This court exercising its criminal jurisdiction must really consider whether these breaches ought to have the effect of mitigating this sentence, not whether it should exercise constitutional powers to provide for all manners of remedy. In light of the gravity of this offence and more so the fact that I have found that this defendant is to be considered dangerous, this court will follow the guidance in *Rummun* and decline to allow these breaches to mitigate the appropriate sentence. He has already had the benefit of the delay which has had one clear effect on the fate of this defendant. He has spent more than the five years on death row, and so even if the original sentence of death had been a lawful sentence, it could no longer be carried out. (See *Pratt*).

[70] In all of the circumstances of this case, the sentence for this man will be as follows:

Steadroy McDougal, being found guilty of a jury of your peers for the offence of murder, you are sentenced to an indeterminate life imprisonment. You shall be required to serve a minimum of 35 years when shall represent the punitive element of this sentence. On the expiry of that minimum punitive period, you shall be reviewed for matters related rehabilitation, dangerousness and other matters under section 38 of the Offences against the Person Act Cap 300. All the time spent on remand or in detention under your first sentence shall be taken into consideration in computing the minimum period. If on that review, you are not released, you shall be reviewed at intervals of two years thereafter for as long as you remain incarcerated.

[71] This is the sentence of this court.

¹⁰ See the approach of *Rummun v State of Mauritius* [2013] 1 WLR 598 at paragraph 13 where the court was considering a remedy for delay. The Board stated: *In some instances it may not be a factor of great weight and there may even be some cases in which, because of the strength of countervailing factors such as the gravity of the offence, it will be accorded no weight at all.*"

[72] I will to thank all counsel for the assistance in this matter.

A handwritten signature in black ink, appearing to read "Darshan Ramdhani", followed by a small mark resembling a comma or a short stroke.

Darshan Ramdhani
High Court Judge (Ag.)