

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

**ANTIGUA
CASE NO. 6 OF 2000**

BETWEEN

THE QUEEN

vs.

FITZROY JARVIS

Appearances:

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

2016: September 19, 21, 26, October 17, 20
November 9, 11, 23, 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 - Notional range of sentence for murder - 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 11th July 2000, the-defendant Fitzroy Jarvis was convicted of the murder of one Lindie Scotland, a 40 years old. farmer who was found dead on his farm on the 7th June 1998 at Morris Looby, Bethesda, St. Paul's, Antigua. It was the prosecution case to the jury that the defendant who appeared to have had a grudge against the deceased lured him into the bushes at Morris Looby and there violently chopped him to death. When he was finished he returned to work as if nothing had happened. He accepted that he had gone into the bushes with the deceased saying that they had done so to collect 'some drugs'. He said that he had returned to his vehicle for this cutlass and on trying to catch up with the deceased he heard him shout out that 'Ras you cut me. Me dead now'. He said that he ran out of the area, dropping his shoe and other items, took his car and left. His denial was rejected by the verdict.

Upon his conviction, like others convicted of murder at the time, the defendant was immediately sentenced to death as this was believed at that time to be the only available sentence for the offence of murder. There was no mitigation hearing, and the defendant was not allowed to make any representations to mitigate his sentence. He was placed in the maximum security wing of the prisons awaiting the execution of his sentence. Nothing was ever done however to carry out this sentence, and it seemed that with the passage of time even though he was still listed as a prisoner under a sentence of death he was treated as every other prisoner so much so that when his risk level was acceptable, he was removed from maximum security and placed in the general population. In 2014, the State filed proceedings to regularize his status in prison and 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 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 an indeterminate life imprisonment with a minimum period of 30 years with additional terms to the sentence set out below for following reasons:

1. The death penalty not being relevant, the maximum penalty which may be imposed for murder is a discretionary indeterminate life sentence which is a whole life sentence. Notwithstanding the delay and complaints of constitutional breach, on this sentencing exercise the court's approach may as a preferred approach first apply in the usual way ordinary common law principles of sentencing and in this regard consider the matter in the round having regards to the offence and the offender taking into consideration the progress he has made. On arriving at what would have been a commensurate sentence, the court must then go on to consider those matters extraneous to the offence and offender, and their mitigating effect on that sentence in arriving at the appropriate sentence in this case.
2. An examination of this offence and the offender, aggravating and mitigating features puts this offence extremely high on the scale of seriousness. This was a premeditated killing in which the defendant lured the deceased to a place where he could chop him to death. The killing actually was very savage and violent; there were ten chop wounds inflicted some of which penetrated to the internal organs of the deceased. He must have died on the spot. Having regards to the violence of this act, considerations of dangerousness and rehabilitation arise. A notional commensurate sentence is therefore a sentence of life imprisonment with the punitive element being fixed notionally at 30 years with the review for early release after that period.
3. There were several constitutional violations in this case. First, there was a violation of his right to a fair trial when upon his conviction, he was automatically sentenced to death without the benefit of a mitigation hearing. His right to a fair trial was also breached by the delay of over 18 years in the imposition of a sentence in accordance with law. These matters also amounted to inhumane treatment in breach of section 7 of the Constitution. The unconstitutional sentence of death was imposed on the 11th July 2000, and since then

he remained in Prison under that sentence. Even after the death sentence was declared unconstitutional in 2015, neither the offender nor the Prison Authorities was informed of his change of status, and that a re-sentencing exercise was to be held. He was only notified when notice was sent out by this court.

4. These breaches were significant but in this case, having regards to violent nature of this crime, and a finding by this court that that the defendant poses a risk of dangerousness, these breaches will not mitigate this sentence in this case. Having regard to this finding of dangerousness, it is necessary that this defendant remain in prison under the indeterminate life sentence so that he can receive the benefit of a robust and structured review programme coupled with an aggressive rehabilitative programme which is designed to address his rehabilitation and his dangerousness. He will be reviewed under section 3B of the Offences against the Persons Act Cap 300 at the expiration of the minimum term.

DECISION

- [1] **RAMDHANI J. (Ag.)** This is a re-sentencing exercise commenced by this Court on the 19th September 2016 and ending with this sentence delivered on the 28th November 2016. On today's date a sentence of an indeterminate life imprisonment with a minimum of 30 years imprisonment with additional terms in this decision was considered in all of the circumstances of this case to be the appropriate sentence for the reasons now set out.
- [2] On the 11th July 2000 the defendant, Fitzroy Jarvis was found guilty of the murder of one Lindie Scotland, a 40 years old farmer at the Morris Looby Estate in the Parish of St. Paul's who he chopped to death on the 7th June 1998. He was sentenced to death on that same day.
- [3] An appeal to the Court of Appeal was dismissed on the 20th March 2002. That same year he was granted a stay of the execution of his sentence. Nothing else was done regarding the execution of the sentence and he remained under this sentence until the 4th June 2015 when the Attorney General obtained an Order from the Constitutional Court declaring the sentence unconstitutional and ordering a re-sentencing.

THE FACTS

- [4] This court not being the trial court examined the record of the trial and heard representations from both sides to determine the facts in this case as would have been found by the jury. There was no resistance from Mr. Fuller for the defendant that these were the matters that the jury must have found.
- [5] The prosecution case relied considerably on circumstantial evidence as well as the evidence from one Sylvester Payne. This witness testified that that sometime after 8 or 9 p.m. on the fateful night, the deceased came for him at his home in his Toyota Sunny motor car and they later met the defendant. Conversations between the two led to the deceased agreeing to meet the defendant at a certain place in the Morris Looby area. The defendant gave directions to the deceased and the deceased and Payne drove to that place which turned out to be a very bushy area. The defendant arrived about 15 minutes later in his pick-up with his lights off. As he arrived he complained that his vehicle had hit a stone and the 'oil pan' of the vehicle had been damaged. The three men with a flashlight tried to examine the damage done to the vehicle. The defendant then requested that the deceased park his car in such that the front would be facing some bushes. He, the defendant then parked his vehicle in such a manner that it effectively blocked in the deceased car.
- [6] The three men then went further into the bushes, the defendant, leading the way with the deceased behind him and Payne leading the rear. The defendant then told Payne to wait as he and the deceased went further into the bushes. Payne went back to where the vehicles were parked. Shortly after, he heard the deceased shout 'Obal Murder. Payne ran off to a nearby village and went to the home of the deceased' brother. Payne and the brother rounded up some others persons and returned to where the vehicles had been parked, but only the deceased car was still there. They went to where the shout had come from and one of the persons stumbled over the body of the deceased.

- [7] Officers investigating the scene found trail of blood running for over 300 feet and leading to where the body lay. Along that trail the police found a grey tam, two pair of shorts, a red elastic band, a pair of tinted glasses, a black tam, and a left shoe. The grey tam, two pairs of shorts and the red elastic band was later identified as the deceased, while the defendant identified the glasses, the other tam and the shoe as his.
- [8] That same day, the police met the defendant at his home and carried out a search of his vehicle. They found a red blade 22 inch cutlass with a black handle and a few pieces of clothing. The defendant said that he had these items with him on the night of the murder. An injury to his left palm and scratches to his hand were also noticed.
- [9] On the 10th June 1998, a post mortem revealed that there were ten wounds on the body of the deceased. One on the right side of the chest measured 10 centimeters by 2 centimeters by 16 centimeters deep. One was a chop wound to the palm and another to the left thumb which the doctor opined were defensive wounds. Some of the chop wounds extended to the internal organs. The cause of death was given as shock and haemorrhage resulting from multiple stab wounds to the chest and abdomen caused by a cutting weapon with a severe degree of force.
- [10] The defendant has always denied the offence. In his sworn testimony he stated that it was the deceased that had asked him to go to the Morris Looby area to collect some weed. He said that at that time they were merely casual friends but he had accepted the invitation. The next night they kept their appointment and he drove his own vehicle to get to Morris Looby and saw the deceased there. He said that his vehicle did in fact hit something and the 'oil pan' was bent. He said that it was the deceased who told Payne not to go with them into the bush. As he started with the deceased he said that he came back for his cutlass. He said this caused the deceased to be ahead of him and as he was walking into the bush he heard the deceased say, "Ras you cut me. Me dead now. Me dead now." He said that he ran back to his vehicle and went straight to work. He never thought to call the police or speak to relatives of the deceased to relay what he had heard. He said the items which were found by the police fell off him as he ran away on hearing the shouts.

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- [11] During his interview with the police, it was suggested to him that he had lured the deceased into the bush to settle an old score with him but this was denied. There was never any other evidence as to motive of the court.

THE MITIGATION HEARING

- [12] The evidence considered at the mitigation hearing included by consent a pre-sentence report dated the 14th October 2016. A victim impact statement was contained in that report. The evidence also included a psychiatric report prepared by Dr. James A. King dated the 22nd October 2016 and a second such report dated the 16th November 2016. A report from the Reverend Canon Emerson Richardson Chaplin at Her Majesty's Prison dated 20 June 2013, a medical report of Dr. Leyland Powell dated 13th June 2013, and a report from the then Acting Superintendent of Prisons Mr. Percy Adams dated 20th June 2013. The Court also received and considered sentencing guidelines from the Crown and written submissions from Mr. John E. Fuller.

The Pre-Sentence Report - Fitzroy Jarvis

- [13] At the date of sentencing the convicted man was presented to this court as a 59 years old man, a father of 7 children, who has spent the last 18 years in prison for this offence. He was 41 years old at the date of the commission of the offence.
- [14] The report reveals a somewhat normal and regular upbringing; he comes from a family which provided him with a stable environment, and one which emphasized the importance of family and biblical teaching. He was raised under 'the umbrella of the Seventh Day Adventist Church, where he was immersed' in religious teachings and traditions.
- [15] Before this crime, he appeared to have been a very stable man, being employed first with the Inland Revenue Department for seven years ending in 1983, before being transferred to the Ministry of Agriculture as a Ranger until this crime in 1998. During his work with the

Ministry, he was responsible for managing natural resources in the South East District in Bethesda area, measuring farm lands, reporting on cultivation practices, the amount of land plowed and crops grown, it seemed as part of land management policy.

[16] He was seen as a quiet man, and carried out his duties without complaint. Even his community and some persons close to him saw him as man who preferred to be left alone, and one who never exhibited any violence. His own siblings describe him as being very generous and were very shocked about this incident. His own mother was deeply affected by the crime. Today community members have expressed their unease about his return to the community but all this is based on the actual crime and nothing really with what they knew of this man prior to June 1998.¹

[17] . In Prison, he has continued to immerse himself in religious teachings and prayer with the First Baptist Church and Gospel Baptist Church and there is really nothing known against him. He prefers to be left alone. This theme has raised concerns about him and in fact has been addressed by other professionals who assessed him for this hearing.

[18] The report from the Chaplain was largely a prayer for leniency for this man.

[19] The report from Superintendent Percy Adams dated the 20th June stated that the defendant 'has displayed calmness. He is very respectful to officers. He is interested in agriculture. Fitzroy Jarvis has taken to rehabilitation seriously'.

¹ There is a particular passage in this report which states as follows: "...others individuals interviewed are of the opinion that the inmate is a serial killer. They were strongly of the view that the inmate has committed similar offence that are yet to be solved by the police." The learned Director pointed it out to the court and asked to the court to disregard this as the Crown was not placing any reliance on such an incendiary statement. Attention was drawn to the Privy Council guidance on these types of statements contained in *sun Daniel Dick Trimmingham v R* [2009] UKPC 25 at para 14 the Board stated: "A probation report on the appellant was given by [probation officer]. The report was highly prejudicial to the appellant, retailing a great deal of hearsay evidence about his past deeds and fear which he was said to instill among people in his area. It concluded with two paragraphs of conclusion and recommendation which were wholly inappropriate for a probation report presented to the Court and which the Judge quite correctly deleted from it. Their Lordships must express the hope that probation reports in future cases will be expressed in a more objective and temperate terms."

The Medical and the Psychiatric Reports

- [20] The medical report indicates that generally he is a healthy man but may have some issues with pain from an old motor vehicle accident. There is a possibility of the onset of arthritis.
- [21] The psychiatric report has raised real concern about him. Whilst it stated that there was no issue related to the defendant's capacity to participate in this sentencing hearing there were concerns. Doctor King states that this man continues to be a 'loner'. The doctor stated that during his evaluation he considered the possibility that this man of having 'Schizoid Personality traits'. The doctor that for the most part this defendant had a 'bland or cold/detached effect while being evaluated'. He opined that based on his evaluation, this defendant's 'relative risk of repeating a violent crime was considered to be moderate to high'.

The Victim - The Impact on Relatives

- [22] Several statements from family members of the deceased were received by the court and were considered as part of these proceedings.
- [23] The primary speaker on behalf of the family is Mr. Jerome Scotland who is now 64 years old. It is clear that even up to today this gentleman is affected by this gruesome crime. He said that the defendant and the Scotland family were raised together on the Delaps Estate. This tragedy has impacted on both families. Today he continues to hope that this defendant would not be returned to the community.
- [24] Mr. Edwin Scotland the 42 years old brother of the deceased stated that murder of his brother 'psychologically devastated the core of his family to this day'. Mr. Sylvester Scotland another also expressed his continued pain over the killing of his brother.
- [25] (There was a plea from all these person not to release this man back into society. But this Court must make it clear that the court considers 'family impact statements' simply to

examine how the crime has impacted society and the family members to assess the harm the crime has caused. This will of course be considered in the overall sentencing process but the views on the family or the community as to what is an appropriate sentence is not relevant to the sentencing process. The law is very clear that a man must be sentenced in accordance with the law and the relevant sentencing principles not according to the wishes of the public.

- [26] This court however must make it clear that the law prevents this court from giving regard to the views of the family in relation to punishment. The English Common Law and the law of this jurisdiction makes it very clear that a sentencing court must have no regards to such views. As one writer noted²:

"Although victim impact statements should be admissible they should deal with impact alone and not go to sentence. If law is to remain certain in this country then sentencing must remain a matter of public policy and this means treating victims with respect but not letting them set the penalty. The continuing suffering of a victim is a matter of aggravation and this should be taken into account but a defendant may also have mitigating circumstances and for these to be properly taken into account sentencing must remain a public function exercised by an impartial figure."

- [27] The harm suffered by the family and the community has been considered.

THE COURT'S APPROACH TO THE SENTENCE

- [28] Arguments were made in this matter by Mr. Fuller on behalf of the offender that, having regards not only the circumstances related to the offence and offender but also the delay and the unconstitutional sentence of death imposed on the offender, a proper sentence should be a fixed term of imprisonment which would realize in his early release from prison.
- [29] The unconstitutional sentence of death, the circumstances of the incarceration and the delay were unique features which made this sentencing exercise a very unusual one. It is therefore important that this court state the approach adopted.

² Victims and sentencing - 148 NLJ 1263 - Alisdair Gillespie

[30] This Court is complying with the Order of the Honourable Justice Cottle sitting as a Constitutional Court in Originating Motion Proceedings No. 359 of 2014. That order declared the sentence of death which had been imposed on this man as it has with others in unrelated matters, as unconstitutional. It was directed that each of these men be sentenced by the High Court. This re-sentencing is therefore an exercise of the court sitting in its criminal jurisdiction as if it were the court passing sentence at the end of the criminal trial.³

[31] 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 in 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.

[32] 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 the prisoner, so much so that even if a prisoner is released on licence this sentence continues to remain on him until his death.⁴

[33] 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 punishment⁵ including retribution,

³ See for a similar approach the decision in *The Republic of Malawi v Njiratenga Banda*, Homicide Sentencing Re-Hearing No. 8 of 2015

⁴ See *R v Foy* (1962) 48 Cr App R 290; *R v Norton* [2001] All ER (D) 92 (May)

⁵ *Desmond Baptiste v R* Criminal Appeal No. 8 of 2003

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.

[34] In this matter, I have considered the experience of the local and regional cases including the following:

1. In **Berthill Fox v R** Criminal Appeal No. 40 of 1998, the appellant killed his fiance 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 shop keeper 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 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 **Rudolph Lewis v R** from St. Vincent and the Grenadines, 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 pleading guilty to murder.

[35] The learned Director commended **R v Sylvester Lindsay** Criminal Case No. 49 of 2011 for my consideration. In this case, the defendant was given an effective 25 years sentence for murder of a tourist during the course of a robbery. The deceased in the matter was one Mr. Drew Golan who was an Australian citizen and expatriate captain visiting Antigua and Barbuda. On the evening of the 22nd January 2009, Mr. Golan and his female companion and a young child were walking along a main road in English Harbour area. The defendant who was in a van asked the driver to stop and confronted Mr. Golan with a firearm in an

attempt to rob him. Mr. Golian swung the bag he was carrying at the defendant and the defendant shot him twice in his chest. He subsequently died of the injuries. At the trial after several witnesses were called the defendant asked to be re-arraigned and pleaded guilty to murder. A partial discount for his late plea led to a sentence of 22 years to be added to his 3 years already spent on remand.

[36] I have looked at the provisions of section 3B of the Offences against the Person Act, Cap 300 of the Laws of Antigua and Barbuda and assessed them against the context of the regional sentences for the offence of murder. It would seem to me that section 3B and the cases recognize that these types of serious offences, may by the manner of their commission give rise in certain cases to a finding by the court that 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. This provision 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. 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.

[37] This court conducted this analysis of the legislation and the cases in identifying a sentence range for the purposes of this sentencing exercise, and is quite aware that such categorization should not cause the court to approach this exercise in a mechanistic manner, but must consider all of the circumstances of this case. As it is, this exercise has assisted this court in assessing the seriousness of this crime in deciding on a range of sentences for this offence. This is an important matter in this case, as this sentencing

exercise is coming just over 20 years after the defendant was found guilty for this offence and he was already being punished on an unconstitutional sentence. This court will consider that where the punitive portion of a sentence or a fixed term sentence is being considered, a broad notional range between 18 years to 35 years is appropriate.

[38] With this analysis in mind and the ranges I have suggested in others related cases during these re-sentencing exercises, I turn to consider the aggravating and mitigating features of this offence and then with the sentencing principles in mind I will fix an appropriate sentence.

[39] This court now turns to consider the aggravating and mitigating features of this case.

The Aggravating Factors of this Case

[40] There are a number of aggravating matters in this case. This was a killing which was premeditated and planned. The defendant essentially lured the deceased into the bushes at the Morris Looby Estate so that he could kill him.

[41] This was a most vicious attack with a cutlass. The medical evidence showed that there were ten chop wounds. This was on a man who was defenseless. One of the witness described the body as appearing 'chopped up, like how you chop up meat'.⁶

[42] Murder in this jurisdiction may be committed by either the intention to kill or the intention to do grievous bodily harm from which death results: In this case, there was clearly an intention to kill as evidence by the manner of the crime and the number of the injuries.

[43] It was suggested that it was an aggravating feature in the case that the deceased was a 'productive member of the community and society and generally carried out his work as a farmer'. Mr. Fuller resisted this as being an aggravating feature. This court also had considerable difficulty with this contention. A person has lost his life. The status of a man

⁶ The evidence of Sylvester Payne at page 11 of the record.

does not in the normal arise as an aggravating matter in a murder case unless perhaps it was the reason why he was targeted and murdered. It will not in this case, operate as a aggravating feature of this offence.

The Mitigating Factors of the offence and the Offender

- [44] I turn to consider the mitigation in this case.
- [45] First, at 41 years of age, he was essentially a man without any previous convictions. He was no youth at that time and had effectively steered clear of the criminal law.
- [46] Second, this man was of considerable good character before this crime. He was seen as quiet and never seen as violent. Community members have today expressed negative views of him but a careful analysis of all that the community is saying is really based on this crime and not of what they know of this man before that day when he chopped the deceased to death.
- [47] Third, he was a productive member of the community and held down a job with the government for all his life, spending 7 years in the Inland Revenue Department before moving into the Agriculture sector. Only good reports have come out from that period of his life. That too has been clearly affected by present views held by his supervisors arising from this crime.
- [48] Fourth, apart from issues being raised on his psychiatric evaluation, he has generally been of good behavior in Prison. He continues to involve himself in religious teachings and prayers.
- [49] He has never shown remorse as he continues to deny this offence. His lack of remorse is neither mitigating nor aggravating; it remains neutral.

- [50] The violations which have been pointed out will be considered after a notional commensurate sentence is fixed.

The Appropriate Sentence

- [51] This offence is an exceptionally serious one. This defendant deceived and lured this man into the bushes at the Morris Looby Estate. The motive has never been clear from the evidence, but it is clear that when he attacked the deceased with the cutlass, he intended to kill him. This was an extremely savage act of violence high on the scale of serious crimes of violence.
- [52] The aggravation in this case indicates that in the usual way, an indeterminate life sentence would have been the appropriate sentence in this case to cater for retribution, deterrence, prevention and rehabilitation. Within this sentence, it would always be important, and more so because he has spent 18 years in prison for this offence, to identify what period of such a sentence would represent the punitive period to allow for the review mechanism.
- [53] In this regard, I have considered the minimum established by the legislation. I am of the view that it is permissible for this court to fix a lower minimum period in a fitting case,⁷ but having regards to the authorities, the use of the cutlass to viciously chop a man to death in a premeditated attack a very serious matter. For this reason, I do believe that in fixing this date for review I should start with that minimum of 30 years. In all of the circumstances of this case surrounding the actual offence and the offender as he now stands before me, a period of 30 years represents the punitive period. A commensurate sentence in this case would therefore be a sentence of life imprisonment with the first review of the sentence to be at 30 years for a reviewing court to consider matters such as rehabilitation, deterrence and others matters of public interests.

⁷ R v Selassie; R v Pearman - (2014) 2 LRC 511

[54] Having regards to the manner of the commission of this offence, the evidence presented to this court especially the unchallenged psychiatric report, this court finds that as he stands today before this court, that this man needs further rehabilitation as there is a real risk that may commit further violent crimes if released immediately.

[55] This is unfortunate as it seems that he has been denied any or all rehabilitative programmes over these years not only perhaps there were not many to offer but that he was seen as a man on death row and so would not have been even considered for such programmes. This will guide and inform the court in its disposal of this matter.

[56] I now turn to consider those other matters which provide further mitigation to this notional sentence.

The Unconstitutional Sentence and the Delay Factor - Extraneous Mitigating Features

[57] Learned Counsel Mr. Fuller, in both his written and oral submission has urged that this court should have regard to the fact that there was an unconstitutional sentence originally imposed on this offender. He argues that further there had been substantial delay in finally imposing a proper sentence. He submits that he has in fact served 29 'prison years' (considering remission for good behavior) since he has been incarcerated for this offence and that a maximum sentence for this offence as the Learned Director has suggested is a range, the outer limit being a maximum of 30 years. He urged this court not to go beyond that outer and impose a fix term sentence.

[58] The learned Director of Public Prosecution provided written sentencing guidelines dated the 11th November 2016. He did advert the court's attention to number of case which indicated a range of life imprisonment to a term of years averaging .25 to 30 years. On the constitutional points he relied on oral submissions and adopted the written submissions made in other matters. There was no objection to this.

[59] There is no doubt as in the other matters that an unconstitutional sentence of death imposed on him on the 11th July 2000. It was so unconstitutional because it had been imposed as a matter of course without the defendant being given an opportunity to be heard in mitigation. See **Reyes v R** [2002] UKPC 11. The right to a fair trial requires that the defendant must be given an opportunity to be heard not only in his trial but also at the sentencing phase. What further aggravates the breach in this case was the fact that this sentence remained on him throughout the time he has spent in prison; a period of 16 years to date. That a man is to be properly sentenced more than 16 years after he is found guilty in an unreasonable delay in the trial process. This delay breaches of his right to be tried within a reasonable time in the circumstances of this case.

[60] These matters also affected and breached his right not to be treated in an inhumane manner, a right given to him by section 7 of the Antigua and Barbuda Constitution. The fact that an unconstitutional sentence of death had been imposed on a man and that it remains on him for 16 years must give rise to a presumption that he has suffered as a result of having the hangman's noose dangling over him for all these years⁸. As 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."*

[61] These matters and the length of the delay are serious breaches. For the purposes of this court, it must be considered whether it will have a mitigating effect on the sentence which was considered as a commensurate sentence in this case.

[62] I have noted **Rummun v The State of Mauritius** [2013] UKPC which makes the point that a breach of the right to a fair trial may in some cases have the effect of mitigating the sentence in an appropriate case. The Board stated:

⁸The AG of Trinidad and Tobago v Angela Ramdeen Civ. App. No. 6 of 2004; Para 32 of the judgment of the Court delivered by Sharma CJ

"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."

- [63] This court has actually decided that in other cases similar breaches (though of greater aggravation as death warrants had been read out in those cases) the notional commensurate sentence would be mitigated. In this case however, this court has found that it is not yet safe to release this offender back into society. Having regard to this finding it is necessary that this defendant remain in prison under the indeterminate life sentence so that he can receive the benefit of a robust and structured review programme coupled with an aggressive rehabilitative programme which is designed to address his rehabilitation and his dangerousness.
- [64] In all of these circumstances, this sentencing court being concerned with an appropriate sentence for the offender, having regards to the offence, the offender and the interests of the community, will not allow these breaches to affect the punitive term of the indeterminate life sentence in this case.
- [65] These constitutional violations including the period of delay in the imposition of the lawful and proper sentence, will not have a mitigating effect in this case. In all of the circumstances of this case, the sentence for this man will be as follows:

Fitzroy Jarvis, you being found guilty of a jury of your peers for the offence of murder, you are sentenced to an indeterminate term of life imprisonment. You shall serve a minimum term of 30 years. All the time spent on remand or in detention for this offence shall be taken into consideration in computing this minimum period of this sentence. At the expiration of the minimum period of 30 years you shall be reviewed in accordance with section 3B of the Offences against the Persons Act, Cap 300.

As long as you remain in prison, you shall be the beneficiary of any and all programmes designed to address your rehabilitation. The Prison Authorities shall provide you with counselling and other clinical treatment to address the issue of recidivism and make you ready for possible release. An initial evaluation is to be done within 30 .days of this order as to what measures may be taken regarding reducing your risk of dangerousness. A report of that review is to be filed in court within these proceedings.

After the expiration of 30 years and the first review, if you are not ordered to be released you shall be reviewed at intervals of two years.

Should your release be allowed, that court should consider whether as a condition of your release, you should be required to continue your counselling sessions which shall be provided by the State.

[66] This is the sentence of this court.

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

[68] In all of these matters the Court wishes to thank the Probation Department for going beyond the call of duty to assist the Court in completing these matier.



Darshan Ramdhani
High Court Judge (Ag.)