

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

COMMONWEALTH OF DOMINICA

CRIMINAL

CASE NO. DOMHCR2011/0026

BETWEEN:

THE STATE

AND

KENRICK TYSON

Appearances:

Ms. Evalina Baptiste and Ms. Sherma Dalrymple for the State

Mr. Wayne Norde and Ms. Bernadette Lambert for Defendant

2015: May 27

JUDGMENT ON SENTENCING

[1] **THOMAS, J: (Ag)** On 27th April, 2015 by a unanimous verdict, you, Kenrick Tyson, of Sinekou was found guilty of the murder of Cecil James between 9-10 May 2009. The victim's body was discovered on the afternoon of 10th May 2009.

[2] The narrow facts of the case are that on the night of 9th May, 2015, the defendant and his female companion left their home in Sinekou and ended up in Concord at the home of the deceased, where the deceased was asleep in his house. The defendant entered the house and without more then proceeded to inflict several blows to the head of Cecil James with a piece of 2 x 4, robbed the

deceased of 6 x \$20.00, a few cans of canned food and some powered milk in a tin. After that, the deceased was left to bleed to death. The body was only discovered in the afternoon when his friend and co-worker went to the deceased's house and discovered his body lying in what appeared to be blood. He was dead and flies had gathered.

[3] Consequent on the guilty verdict; the court ordered a social inquiry report on the defendant. It was prepared by Probation Officer Ms Anestin Baron.

[4] In the report, the Probation Officer examined the prisoner's family history/ background and home and conducted interviews with the prisoner, his mother, maternal grandmother and her husband, maternal sister, maternal aunt, brother, cousin, wife of the deceased, and the deceased youngest daughter. The Probation Officer then delivered her conclusion: It reads in part as follows:

"In summary, the act of violence for which Kenrick Tyson has been convicted has claimed the life of Cecil James. Kenrick however maintains that the facts surrounding this matter are contrary to this statement in that he is innocent of committing the heinous crime.

Kenrick revealed that he was familiar with the victim and that although they were not close friends, they sometimes hung out together.

Kenrick did not express remorse for the offence for which he has been convicted which resulted in claiming the life of Cecil James. Rather, he maintains his innocence and instead said that he feels bad that he was found guilty for an offence he did not commit.

During discourse with randomly selected community persons, Kenrick was described as a violent individual who led an unproductive life in the community. It was also said that Kenrick was a victim of child abuse from a very young age and does not have a solid educational foundation because of his truant behaviour from an early age. Those interviewed were of the view that Kenrick needs to be held accountable for his actions and that he was allegedly involved in certain criminal behaviors in the Kalinago Territory and surrounding communities.

Kenrick admitted that he is not a first time offender. The offences he mentioned for which he served prison sentences are serious offences. The overall assessment pinpointed major indicators which could have impacted on Kenrick's behaviour in his adult life. It was confirmed by Kenrick, his mother and grandparents that he was seriously abused and neglected as a child and that he lacked established interpersonal relationships with his parents and siblings. This revelation could be

considered among the reasons for the truancy displayed by Kenrick as well as the behavioral problems. Furthermore, one of the interviewees reported that Kenrick was extremely abusive towards his former partner. This behaviour, if factual, could also be an effect of the abuse he suffered as a child, when the abused becomes the abuser.

The views obtained from the family of Cecil James cannot be overlooked. His daughter revealed that she was only fourteen years at the time of his death and still thinks about the incident years later. His wife and sister also shared sentiments which suggest that Cecil's death still continues to impact on them. Importantly, his wife shared her sentiment that the incident was the reason why she had to relocate to Roseau.

Taking into consideration all sentiments expressed, the outcome is not encouraging. The views of the family and acquaintances of both Kenrick Tyson and the deceased were obtained and the fact remains that Kenrick Tyson was found guilty of the offence of Murder of Cecil James. This action can never be justified, despite Kenrick's claim that he is innocent of the charge against him."

- [5] The court must now consider some relevant considerations in order to arrive at a fair and appropriate sentence.

Nature of the offence

- [6] It is murder being one of the most serious offences known to the law. It is the taking of a life unlawfully or without justification.

Background to the murder

- [7] There is no background as such from the evidence. However the defendant in one of his statements to the police did indicate that the deceased had beaten him up and took his gold chain at some time prior. But the prisoner did tell the Probation Officer that he hung out with the deceased in the past.

Manner of execution

[8] As indicated before, it is simply that the deceased was asleep with his door open and he was hit on the head several times with a piece of 2 x 4 local wood. Dr Christmas said in evidence that the deceased could not have survived for more than 8 hours after the blows.

Maximum penalty for the offence

[9] The maximum penalty under the law is life imprisonment.

Previous convictions

[10] The defendant has 27 previous convictions consisting of: 17 for theft, 1 for malicious damage, 3 for possession of cannabis, 1 for possession of firearms, 1 for possession of ammunition, 3 for possession of cannabis with intent to supply, 1 for escaping lawful custody and 1 for theft of agricultural produce. To use a cricket metaphor you are now 28 not out.

Defendant's Age

[11] Defendant is now 33 years. His date of birth being 29th September, 1981.

Principles of Sentencing

[12] The aims of sentencing are retribution, deterrence, reformation and protection. These aims were explained in this way by Lord Justice Lawton in **R. v Sergeant**¹ and expanded on by CJ Byron, as he then was, in **Desmond Baptiste v R.**² The essence is as follows: the retributive element is intended to follow public revulsion for the offence and to punish the offender for his wrong conduct. Deterrence sentences are aimed at deterring not only the actual offender from further offences but also potential offenders from breaking the law. The importance of reforming of the offender is shown by the growing emphasis laid upon it. However, the protection of society is often the overriding consideration. In addition reparation is becoming an important objective in sentencing.

¹ [1974] 60 CR App R74

² Criminal Appeal No. 8/2003

Mitigating Factors

[13] Except for the loss of one leg there are no mitigating factors discernible by the court. In any event, the evidence indicates that the loss was of your own doing.

Aggravating Factors

[14] These lie in the fact that the deceased was beaten in the head in his sleep. He was alone so that by implication he was left to die alone. Based on the doctors evidence, it also means by implication that he lay dead for several hours until his friend discovered it some time around 3:30 to 4:00 p.m

Plea in Mitigation

[15] Learned counsel, Mr. Norde in advancing the plea in mitigation spoke of a second chance in life, the absence of an intention to kill and his abuse and neglect by parents.

Sentencing in Murder cases

[16] Mr. Justice Rawlins in the case of **Mervyn Moise v R** analysed³ the relevant principles relative to sentences for murder. The learned Justice of Appeal, as he then was, reasoned that the principles derive from the “fountain head” of **Spence and Hughes** and a number of subsequent kindred cases”.⁴ The learned judge continued thus:

“The cases mentioned in the forgoing paragraph establish that the first principle by which a sentencing judge is to be guided in these cases as that there is a presumption in favour of an unqualified right to life. The second consideration is that the death penalty should be imposed only in the most exceptional and extreme cases of murder. At the hearing, the convicted person must raise mitigating factors by adding evidence, unless the mitigating factors are obvious from the evidence given at the trial. The

³ Appeal No. 8/2003 (SLU)

⁴ These include Francis Phillip and Kevin John v The Queen, St. Lucia Criminal Appeal no. 4 of 2003 – Alleyne JA. Richard Reyes v The Queen, Privy Council Appeal No. 64 of 2001 per Lord Bingham; Christopher Reing v The Queen, St. Lucia Criminal Appeal No. 6 of 2002, per Saunders JA as he then was, and Abraham v The Queen, St. Vincent Criminal Appeal No. 12 of 1999

burden to rebut the presumption then shifts to their crown. The crown must negative the presence of mitigating factors beyond a reasonable doubt. The duty of the sentencing judge is to weigh the mitigating and aggravating circumstances that might be present, in order to determine whether to impose a sentence of death or some lesser sentence.

In summary, the sentencing judge is required to consider the facts and circumstances that surround the commission of the offence. However, the relative importance of these two factors may vary according to the overall circumstances of the case.”

[17] The sentences of our courts for murder, flow from the fountain head and kindred cases and, Justice Louise Blenman, as she then was, in **R v Rudy Monelle**⁵ identified a number of cases showing sentences imposed for murder depending on the facts and circumstances. In that case the death was caused by the burning of the house in which the deceased lived. The learned Judge imposed a sentence of life imprisonment. Prior to that, the learned judge examined a number of cases in order to show the manner in which the sentences were imposed. These include: **Nordis Maynard v The Queen**⁶ in which the appellant at the time of sentence was 22 and a sentence of life imprisonment was upheld. In **Kenel Liburd and Jamal Liburd**⁷, two brothers aged 24 and 20 years, were convicted of murder and manslaughter and sentenced to life imprisonment and 30 years imprisonment. These sentencing were upheld on appeal. In the case of **The Queen v Lyndon Lambert**⁸ the defendant who was 20 years at the time of the offence was convicted of murder and sentenced to life imprisonment. In **Java Lawrence v The Director of Public Prosecutions**⁹, the appellant was sentenced to life imprisonment on conviction for murder. The sentence was upheld on appeal. In **Roger George v The State**¹⁰ the appellant conviction for murder was quashed and a conviction for manslaughter substituted. Finally, in **Augustine Mc Pierre v The Queen**¹¹, the appellant was given a sentence of life imprisonment for the murder of his common law wife. The sentence was upheld by the Court of Appeal.

⁵ Criminal Case No. 15 of 2007

⁶ No. 12 of 2004 (SKN)

⁷ Criminal Appeal Nos. 9 & 10 of 2003 (SKN)

⁸ Criminal Case No. 0057 of 2003 (GREN.)

⁹ Criminal Appeal No. 1 of 2008

¹⁰ Criminal Appeal No. 4 of 1999

¹¹ Criminal Appeal No. 12 of 2002 (SVG)

[18] In the case of **The Queen v Rudy Monelle** Justice Louise Blenman, as she then was, summarized the imposition of the sentence of life imprisonment as being where the defendant has committed the very violent and serious offence. This court while it is guided by Her Ladyship's reasoning will add to the description to include: brutal and a total disregard for the victim's life by ensuring that he or she could not survive.

[19] Recently in St. Kitts in the case of **R v Raheem Crossley**,¹² The defendant was sentenced to life imprisonment after being found guilty of murder. That defendant shot his victim 5 times, the bullets landed on his head, nose and the arm. The gist of the medical evidence was that the victim died instantly. He was on his way to work at 6:30 am. All that was found on the deceased was a bowl of rice.

Aims of sentencing in context

[20] It cannot be said that Dominica is murder free. But a brutal murder of this nature is new and with it the aims of retribution, deterrence and protection are immediately relevant.

The people of Dominica would need to know that even if deliberately or by accident a door of their house left open someone living there would not be killed.

[21] The evidence suggests that the murder of Cecil James was part of the unprovoked and without fault on the deceased. As such there can be no doubt that society would need retribution for this kind of conduct in order to show abhorrence. Equally, deterrence is critical in order to dissuade the prisoner at some future date from committing a similar crime while at the same time deterring like murder person in the same regard.

[22] Without a doubt, the Dominica society needs to be protected against murders generally and brutal murders in particular. The main reason being the anguish such an event generates. The children of the deceased in this case spike of the loss of such an early age. The principle of protection follows naturally in this context so that people of this nature are removed from the main stream of society.

¹² SKBHCR 2012 No. 68

[23] Given the fact of a conviction for murder it is likely that the sentence will be long duration, coupled with the fact that the prisoner has lost one leg renders the matter of rehabilitation a challenge, given the resources and the facilities available in this context.

Sentence

[24] Kenrick Tyson, what you did falls within the description of violent and brutal. The brutality is compounded by the fact, in that, there was no struggle as your victim was asleep. Several blows were leveled to the victim's head. He died without even having the time or ability to ask God to help him. He died without an opportunity to say goodbye to his wife and children and close friends. He died alone in a blood soaked bed. That is brutality at the highest. It is one thing to die after a struggle or sometime after because of a wound. It must be a totally different to die in one's sleep as a result of a murder.

[25] What is perplexing is that in your statement in court you said you hit the deceased but you went on to say you never intended to kill anyone. Yet, you told the Probation Officer that you are innocent. You deserve no mercy. Your sentence again is life imprisonment.

[26] Finally, I wish to again commend the jury for their intellectual skills and understanding of the evidence that was evident because they asked that 2 witnesses be recalled. In this connection they prepared two foolscap pages of questions relating to the accomplice direction to which learned counsel on both sides had no objection after they were perused by them. Also, the court wishes to thank the witnesses, but in particular, Inspector Riviere who did a thorough job of investigating the case.

[27] The court's appreciation must also be extended to Sgt. Cuffy for the manner in which he gave his evidence during the trial and as such the court never had to ask him to repeat anything.

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Errol L. Thomas

High Court Judge [Ag]