

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

**SAINT LUCIA
CASE NO. SLUHRD2013/0911**

BETWEEN

THE QUEEN

vs.

LANCE WILSON aka 'GOATS'

Appearances:

Mr. David Moyston for the Defendant

Mr. Stephen Brette Crown Counsel for the Crown

2015: March 9th to the 18th, July 16th, 24th
November 10th

Sentencing – Non-capital murder – Unanimous Verdict of Guilty – Degree of culpability informing starting point sentence of 30 years – Aggravating factors – Act of killing for the purpose of stealing – Use of force – Use of weapon – Acts to conceal body – Boasting of the killing – Mitigating factors – No previous relevant violent offences – Treated as first time offender – Sentence of 25 years.

DECISION

[1] **RAMDHANI J. (Ag.)** This decision was delivered orally on the 24th July 2015. I promised to reduce it into writing. This fulfils that promise.

[2] The defendant, Lance Wilson also known as 'Goats' was indicted by the Learned Director of Public Prosecutions for the offence of murder contrary to section 85(a) of the Criminal Code, Cap. 3.01 of the Revised Laws of St. Lucia 2008. His trial before judge and jury began on the 9th March 2015 and on the 18th March 2015, a unanimous verdict of guilty

was returned against him. He is now before this court for sentencing the usual reports having been received and considered.

The Prosecution's Case at Trial

- [3] The murder took place at Grand Anse in the community of Babonneau sometime between Friday the 14th and Sunday the 23rd October 2011. The deceased victim, one Anthony Boyd also known as 'Coolie Man' was a farmer of sorts who lived at a solitary location in the community. He was the herder of more than 80 goats that he kept on his lands.
- [4] Sometime on the 23rd October 2011, the defendant was seen with two goats and he was heard to say that he gave Coolie Man 'two lash' and took the goats. The dead body of Mr. Boyd was discovered in a little creek or river not far from his home. It appeared that he had been dragged to the river, as his clothes were somewhat undone and pants rolled up. The post mortem revealed that he had died from injuries to the top of his head; he had a depressed skull fracture that was caused by some blunt force trauma.
- [5] The jury must have believed that the defendant had attacked and killed the deceased by striking him with a stick, beating him about his head and fracturing his skull and thereafter dragging him, dumping his body in the river and leaving him for dead.
- [6] The body of the deceased was only discovered after a friend went searching for him as he had not been seen for days.

The Pre Sentence Report

- [7] The defendant is originally from Chasin, Babonneau and presented to this court as 25 year-old one-time farmer, labourer and current odd job man prior to his remand for this offence. He grew up in Talvern with his mother and two brothers. His family was not well off but his mother and his 'visiting' father always sought to ensure that he and his brothers grew up without want. His mother tried to ensure that there was discipline in the home.
- [8] The defendant was seen by at family members as non-violent but concerns were expressed about his associations. Some of the community members saw him as a respectable person but others indicated that he had a tendency to be aggressive particularly when provoked. Mention was made of his behaviour when under the influence of alcohol. He was once a marijuana user but has since ceased that practice. He is well tattooed, and among these are tattoos of a firearm, a fist and a marijuana leaf. There is no indication in the pre-sentence report when these were done. If this court could have even considered this, it would have been relevant to have this bit of information.
- [9] The defendant himself accepts that he avoids volatile situations but may retaliate if provoked. He accepted that there have been times when persons would refuse to pay him for work done and his response was to appropriate property belonging to them in lieu of payment.
- [10] He has three previous convictions, two for stealing for which he got two years imprisonment, and one for taking a vehicle without the owner's consent for which he got one year.
- [11] The general view of the community is that today this defendant poses no threat to the community.

The Psychiatric Report

- [12] The psychiatric report dated the 3rd July 2015 opines that the defendant was not found to be a threat to society, nor to any particular person or persons. He is said to have no chronic mental disorder, which would make him a danger to society.

The Victim's Family Impact Statement

- [13] The single remaining relative of the deceased Joseph Boyd also known as 'Coolie Man' in St Lucia is one, is his brother, 63 years old Martin Boyd. The Boyds are Grenadians who migrated to St. Lucia many years ago. There was another brother who died some 13 years ago from a traffic accident in St. Lucia. The deceased's mother also died in 2011 just after this tragic killing.
- [14] The deceased is also survived by three children all of who live in Grenada and all who were devastated to learn of their father's death. They continue to make contact with their uncle Martin Boyd to speak of their father and his untimely passing.
- [15] The deceased, a farmer and shepherd with a large herd of goats, shared a close relationship with his surviving brother. This brother recalls that the deceased supported him and shared crops regularly; he even benefitted from an occasional goat. As are the goats, today, the emotional and other kind support is gone. Today, the deceased is sorely missed by his family.
- [16] During trial of this matter, the court discovered that following the death of the deceased, no steps were taken by anyone to secure the large herd of goats kept by the deceased and as a result all were either stolen or lost. The family has not recovered any of the goats.

The Maximum Sentence and Principle of Sentencing

- [17] The prescribed penalty for non-capital murder is life imprisonment. It has been accepted that this is a whole natural life sentence. The court has a wide discretion to give any less term of imprisonment than the prescribed maximum.¹
- [18] In deciding what the appropriate sentence is in any given case, the court is to be guided by the provisions of the Criminal Code as well as those common law principles of sentencing.
- [19] There are no statutory benchmarks in place for the offence of murder. The court is of course required to have regard to the aims of any sentence and in particular section 1102(2) of the Criminal Code Cap 3.01 of the Revised Laws of St. Lucia, must have regard to the considerations relating to the rehabilitation of the offender as an aim of sentencing. Section 1102(2)(b) also requires that the court observe as a guideline in any sentence, that 'the gravity of any punishment must be commensurate with the gravity of the offence.'²
- [20] A court in St. Lucia may well be entitled to impose a sentence of life imprisonment even when it is sentence other than a commensurate sentence. This is one of the effects of section 1097(2)(b) which allows a longer than commensurate sentence to be imposed where the 'offence is of a violent or sexual nature' and in the opinion of the court 'such a term is necessary to protect the public from serious harm from the offender.'
- [21] The defendant through his attorney has effectively argued that a fixed determinate sentence should be set as a benchmark in this case and that further, this was not an appropriate case for a life imprisonment and that a determinate sentence was the only commensurate sentence.

¹ Section 1123(1) of the Code states: "*Subject to the provisions of this Code or of any other enactment relating to any offence, the High Court before which any person is convicted of any offence may, in its discretion, sentence the person to any less term of imprisonment than that prescribed by this Code, or such other enactment, for such offence.*"

² See also section 1097(2) (a) of the Criminal Code Cap 3.01

- [22] No doubt as Parliament has recognized and accepted, a commensurate sentence for the offence of non-capital may well be a sentence of life imprisonment. Our court of appeal in **David Roberts v R** Criminal Appeal No. 8 of 2008 has accepted that:

*"It may well be that considering the matter in the round, including the individual circumstances of the offender and the offence, punishment and deterrent may well be served by the prisoner remaining in prison for life."*³

- [23] The current UK statutory position **for certain serious offences under the CJA 2003**, is that a court should only impose a life imprisonment on an offender in certain circumstances. Whilst such a sentence may often depend on whether the offender is considered dangerous, a sentence of life imprisonment does not always depend on a finding of dangerous and may well be imposed on the basis of the seriousness of the offence. In **Attorney General's Reference (No 27 of 2013); R v Burinskas; R v Phillips and other appeals** [2015] 1 All ER 93 the court held:

"If the offender is not dangerous and s 224A of the CJA 2003 does not apply, a determinate sentence should be passed. If the offender is not dangerous and the conditions in s 224A are satisfied then (subject to subsection (2)(a) and (b)), a life sentence must be imposed. If the offender is dangerous, the judge must consider whether the seriousness of the offence and offences associated with it justify a life sentence. Seriousness is to be construed by the consideration of: (i) the seriousness of the offence itself, on its own or with other offences associated with it in accordance with the provisions of s 143(1)⁴; this is always a matter for the judgment of the court; (ii) the offender's previous convictions, in accordance with s 143(2); (iii) the level of danger to the public posed by the offender and whether there is a reliable estimate of the length of time he will remain a danger; (iv) the available alternative sentences. If a life sentence is justified then the judge must pass a life sentence in accordance with s 225."

³ There was a constitutional challenge to a sentence of life imprisonment imposed in St. Vincent and the Grenadines in this case. The Court of Appeal held *inter alia* that: "Under section 65(1) of the Constitution, the Governor General may grant a free or conditional pardon to a person sentenced to life imprisonment, grant a respite of the imprisonment imposed; substitute a lesser punishment or remit the punishment imposed. This indicates that there is a possibility of a future release by executive clemency of a prisoner serving a life sentence. A life sentence therefore would not be incompatible with section 5 of the Constitution."

⁴ Section 143, so far as material, provides: '(1) In considering the seriousness of any offence, the court must consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably have caused. (2) In considering the seriousness of an offence ("the current offence") committed by an offender who has one or more previous convictions, the court must treat each previous conviction as an aggravating factor if (in the case of that conviction) the court considers that it can reasonably be so treated having regard, in particular, to—(a) the nature of the offence to which the conviction relates and its relevance to the current offence, and (b) the time that has elapsed since the conviction ...'

[24] A finding of dangerousness may be made where the court is satisfied that there is a significant risk that the offender may commit further offences which involves serious harm to members of the public. It is sufficient to establish that the significant risk exist in relation to a single member of the public or a small group of the public.⁵ This finding of dangerousness may be made having regards to past conduct as well as with reference to the facts of the instant offence. The court may take into consideration all that is known to the court deriving from the agreed upon facts, and or the admissible evidence or information which grounds the charge and has been tested by cross examination. Quite part from this the court is also entitled to make such a finding from the various reports before the court including the pre-sentence and the psychiatric reports.⁶

[25] I am of the view that even in the absence of a finding that the offender is dangerous, this court would be entitled to impose as a commensurate sentence, a sentence of life imprisonment for non-capital murder where the aggravating and general mitigating features taken together personal features of the defendant justify such a sentence. In the absence of a finding that the offender is dangerous, there must really be serious aggravating features in a case of this nature to meet this threshold.

[26] Whether it is to be a sentence of life imprisonment or a fixed determinate sentence, the Crown's guidelines has also properly suggested that the court is required to bear in mind the statutory guidelines and the other classic principles of sentencing in arriving at the appropriate sentence. In the context of such an approach, it is useful to draw upon the experience of the courts both in and out of this region in considering whether the seriousness of the offence taken in the round with all the other features of the offence and the offender requires a sentence of life imprisonment or whether a determinate sentence is

⁵ See R. v Fazli (Hamayoun) [2009] EWCA Crim 939

⁶ See R. v Fazli (Hamayoun) [2009] EWCA Crim 939

appropriate and then to set an appropriate benchmark for the offence and ultimately to fix the final sentence.

- [27] When these guidelines were filed in 2012, the Crown's guidelines had commended the UK's minimum starting point for this offence that had been adopted by the British Virgin Islands for these types of cases. See **R v Andrew Milton and Others** Criminal Case number 18 of 2007
- [28] For the UK, the procedure that should be followed to arrive at a starting point is set out in a 'Practice Direction'. This Practice Direction requires that the court to consider the seriousness of the offence and explain Schedule 21 of the UK Criminal Justice Act 2003. In very serious cases where there are a number of aggravating factors, a minimum term of 30 years is appropriate.
- [29] This Practice Direction and the CJA 200 engaged the England and Wales Court of Appeal in four conjoined appeals and affirmed that the recommended tariff for very serious murders was a sentence of 30 years imprisonment. **R v Sullivan, R v Gibbs, R v Elener, R v Elener** [2004] Crim 1762.
- [30] The guidelines asked the court to consider **R v Neal Jones and Others** [2006] 2 Cr. App. Rep (s) 19. In that case the English court was tasked with finding a minimum sentence. The court held that where a firearm was carried for the purpose of being used as an offensive weapon, it is hard to envisage a reason for not following the guidance in Sch. 21 of the UK CJA 2003 and adopting 30 years of a starting point.
- [31] The guidelines also suggested that this court consider a number of cases in which sentences of life imprisonment were considered appropriate for murder. These are **Nardis Maynard v R** No. 12 of 2004 St. Kitts and Nevis, **Kamal Liburd and Jamal Liburd v R** Criminal Appeal No. 9 and 10 of 2003, **R v Lyndon Lambert** Criminal Case No. 57 of

2003 and **Java Lawrence v The DPP** Criminal Appeal No, 1 of 2008. The guidelines also specifically also referred to **R v Lance Blades** Criminal Case No. 41 of 2011.

- [32] If anything, these cases and the UK guidelines fortify my view that the appropriate starting point sentence for this offence should be 30 years.

The Aggravating Factors of this Case

- [33] This is another case in which the Crown's Guidelines has submitted that the fact that a life was taken and that the offence is prevalent in this jurisdiction are to be considered matters of aggravation for the purpose of sentencing. These are not aggravating features of the offence of murder in this sense. This is an ingredient of the offence of murder. It makes the offence and it makes the offence serious. It is what informs the statutory maximum and the starting sentence, but it is not a factor to increase the sentence.
- [34] The prevalence of the offence is also not a matter that serves as aggravating the sentence moving it upwards from the starting point; what it does is to inform the starting point and may have the result of pushing the starting point upwards before aggravating and mitigating factors are considered.
- [35] The circumstantial evidence in this case as well as the oral statements made by the defendants makes it quite clear that the defendant struck an unarmed man on his head with a wood fracturing his skull.
- [36] It is an aggravation that the defendant did this for two goats. It would not have been acceptable but if he was intent to steal two goats he could have very well have done so when the deceased was not there. If he had been caught in the act, it is equally not acceptable that he should kill someone to avoid detection for stealing two goats.

[37] It is also seriously aggravating that having bashed this man on his head; he then dragged him and dumped him the river leaving him for dead.

[38] It was suggested that there was the use of superfluous force in this case pointing the signs of two 'blows' on his skull any one of which could have killed him. The guidelines suggested that this was an aggravating feature. I agree that this is aggravating.

[39] It was also an aggravating feature that this defendant boasted that he lashed 'Coolie Man' and had taken his goats.

The Mitigating Features of the Case

[40] The guidelines stated that the defendant had no previous convictions and this was the only mitigating feature of the case. I find this suggestion strange since his record of conviction, which he accepted as being accurate, reflects that he has had three previous convictions albeit for unrelated offences. The first was in 2008 when he was found guilty of taking a vehicle without the owner's consent. The two others were dealt with together in 2009 when he was found guilty of two charges of stealing and two years imprisonment on each offence to be served concurrent. He was released from prison having served his terms in December 2010.

[41] I would prefer to approach the Crown's statement in their guidelines as suggesting that this court treat this offender as a first time offender. Having regard to the summary character of these other offence and particularly that none had any element of violence, I am prepared to treat him as a first time offender.

[42] I did have regard to the mitigation on his behalf by learned counsel Mr. Moyston. It is necessary that I state for the record that I did not use any of the previous offences as an

aggravating matter since they were unrelated and did not contain any element of violence, the crucial element of this offence.

[43] I do agree with the prosecution that there is nothing else going for this man.

The Appropriate Sentence

[44] This was a senseless killing. This defendant killed a man for two goats. Having regard to the 'Family Impact Statement', this tragic and dastardly act has had lasting effects on the relatives.

[45] This defendant must have known that he had killed the victim as he simply did not strike him and left him where he fell. He deliberately moved the body and concealed it to avoid discovery. He knew he had killed the man. Remorse did not affect him at all as he still carried out his plan of escaping with the goats in full view of the world to see. It would have been easy for him to steal these goats without discovery.

[46] I have noted the pre sentence and the psychiatric reports. The latter does not suggest that he suffers from any cognitive defect nor does he suffer from any mental disorder.

[47] The facts that he boasted about this killing and that he had stolen the two goats are also shocking. This man had little regard for life. I did note on this point that the psychiatric report stated that he was not found to be a threat to society and that he could not be regarded as posing a danger to society. Having regard to my own analysis of the evidence and my reading of the pre sentence report I also do not regard that he is a danger to society for the purposes of section 1097(2)(b) of the Criminal Code, Cap 3.01 of the Revised Laws of St. Lucia.

- [48] This act of senseless killing must be punished appropriately. The appropriate and commensurate punishment is to be a lengthy custodial term. It is important that this court expresses society abhorrence to this terrible crime. The voices of good people must be heard through this court in the sentence to be imposed.
- [49] Others likeminded individual must also be forewarned. Acts of violence will in the normal course carry jail time. Acts of murder will be punished with lengthy custodial terms. These offences are prevalent in this society. The sanctity of life is given little or no regard by some persons. This sort of impulsive violent behaviour must be stopped.
- [50] I have looked at this case in the round. It is likely that even though this act was intentional it was likely that the intent to seriously harm or kill the victim would have arisen in the matter of seconds when the defendant was confronted. This must be the approach since the evidence did not point to a finding that he went there to kill the victim. This informs his degree of culpability which though high, cannot be viewed as very high. I cannot in any sense view this killing as one of the 'worst of the worst'.
- [51] It is this degree of culpability that has led me to decide on a determinate sentence. I have used the starting point of 30 years and I have factored in the aggravating factors and the single mitigating factor of this case. I have given due weight to the rehabilitative aim of sentencing. To my mind the proper sentence is a sentence of 25 years imprisonment. All time spent on remand will be taken into account.
- [52] He will receive the appropriate counseling for his present complaints about stress. He will also be the beneficiary of all programmes which will address his risk factors and prepare him in the long term for his eventual release back into society. If he is minded, he should also be encouraged to participate in all educational programmes at the facility.

.....

.....

Darshan Ramdhani
High Court Judge (Ag.)