

EASTERN CARIBBEAN SUPREME COURT

**FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT
(CRIMINAL)
A.D. 2015**

CLAIM NO. SKBHCR2013/0032

BETWEEN:

DIRECTOR OF PUBLIC PROSECUTIONS

AND

ST. CLAIR ELLIOTT

Appearances:

Mr. Giovanni James and Mr. Teshawn Vasquez for the Director of Public Prosecutions

Ms. Natasha S. Grey for the accused

2015: 11th May

JUDGMENT ON SENTENCE

[1] **CARTER J.:** If there was a theme to be attached to each criminal trial, the theme of this trial would effectively be summed up in a verse from First Corinthians, Chapter 13, verse 11: *"When I was a child, I spoke as a child, I understood as a child, I thought as a child: but when I became a man, I put away childish things."*

[2] The outcome of not paying heed to the lesson implicit in this theme is the reason why the prisoner sits in court today awaiting sentence for the crime of manslaughter. The result of this lack of heed is also poignantly described in the Social Inquiry Report prepared for this sentencing phase, as told to the probation

officer by persons in the community of Newton Ground: *"It's sad to see how all this end up because this ended up rocking this small community, families were broken..." "...this one incident broke the community because it was not suppose to happen, it have created enemies"*.

- [3] The prisoner St. Clair Elliott was charged on an indictment with one (1) count of murder, that he St. Clair Elliott on the 25th day of July 2012 murdered Chelston Mills. On the day of the trial the prosecution was granted leave to amend the indictment to add a count of manslaughter. The prisoner pleaded "not guilty" to both counts on the indictment, but changed his plea after the prosecution had called a number of witnesses to that of guilty to manslaughter. This plea was accepted by the prosecution and by the Court, based on the evidence that had been presented by the prosecution to that point. The jury were directed to return a formal verdict of guilty to manslaughter
- [4] The facts as accepted by the court were that the deceased and the prisoner had been involved in an altercation some days before the date of the incident. On the 25th of July 2012, the prisoner threatened the deceased and there was some bottle throwing between the two of them. They each retreated and the evidence was that the deceased went about his business of building a dog cage for the owner of a shop in the district. However the prisoner returned and was observed carrying a beer box containing bottles. He confronted the deceased and was seen striking the deceased in his chest. The deceased fell to the ground and the prisoner was seen running away. The prisoner was later heard to say that he had just killed a man. An autopsy performed on the deceased revealed that he died as a result of three penetrating wounds to the chest area.
- [5] This Court must consider the relevant principles of sentencing as they have been set out and alluded to in such cases as **R v Sargeant**¹ and **Desmond Baptiste et al v R**.² In **Desmond Baptiste** these were stated to be:

¹60 Cr. App. R. 74 at 77

- (i) Retribution - in recognition that punishment is intended to reflect society's and the legislature's abhorrence of the offence and the offender;
- (ii) Deterrence - to deter potential offenders and the offender himself from recidivism;
- (iii) Prevention - aimed at preventing the offender through incarceration from offending against the law and thus protection of the society; and
- (iv) Rehabilitation - aimed at assisting the offender to reform his ways so as to become a contributing member of society.

[6] The court's main aim in seeking to arrive at an appropriate sentence in this case must be retribution; the court must show its abhorrence for these crimes that deprive a society of its youth but also to reflect that the court is mindful of the prevalence of these crimes in St. Kitts and Nevis.

[7] The court also considers that it must pay heed in arriving at a sentence to the aim of deterrence. Members of society must be made to realize that criminal offending has real consequences. The court does however feel that the principle of rehabilitation must also be considered. The prisoner is still a very young man who can make a contribution to this society. It may well be that the loss of a friend is the catalyst for the prisoner to become a contributing member of this society.

[8] The court must consider the aggravating and mitigating factors in this case as it seeks to determine an appropriate sentence. As has been accepted and applied in this jurisdiction and as stated in **Winston Joseph v R**³ by Sir Dennis Byron CJ, the actual sentence imposed, will depend upon the existence and evaluation of aggravating and mitigating factors. The court must not only identify the presence of aggravating and mitigating factors, but must embark upon an evaluative process. The aggravating and mitigating factors must be weighed. If the aggravating factors are outweighed by the mitigating factors, the tendency must be

²St. Vincent Criminal Appeal No.8 of 2003

³Criminal Appeal No. 4 of 2000 (SLU)

towards a lower sentence. Where the mitigating factors are outweighed by the aggravating factors, the sentence must tend to go higher.

[9] I consider that the aggravating factors in this case are as follows:

- (1) The nature of the offence, a young man has lost his life,
- (2) The prisoner is not a man of good character, he does have two (2) previous convictions, one of which was for throwing missiles, a pattern of behaviour reflected in the circumstances leading up to the commission of the instant offence;
- (3) The circumstances of the offence and the use of a weapon, a knife, in the commission of the offence;
- (4) Though the court accepts that there was some element of provocation, the prisoner armed himself and went in search of the deceased after an initial altercation.

[10] I consider that the mitigating factors are as follows:

- (1) The prisoners' relative youth; he is now 25 years old and was 22 at the time of the commission of the offence;
- (2) The prisoner guilty plea at an early stage of the trial and before the prosecution had closed its case;
- (3) The element of provocation that was made out on the evidence presented during the course of the prosecution case.

[11] The aggravating factors outweigh the mitigating factors in this case. The court notes that the aggravating factors however do not far outweigh the mitigating factors and this is one of the matters that the court will have in mind as it seeks to arrive at an appropriate sentence in this case.

[12] This court is in no doubt that the prisoner feels real remorse for this crime. As the evidence was led and from a vantage point on the Bench it appeared that he seemed to feel as a physical blow, the import of his actions having led to the death

of a man whom he called a friend. As detailed in the Social Inquiry Report: “*St. Clair and Chelly (the deceased) were much closer than any of the boys in the community. The two (2) would spend a lot of time here...even eat out the same pot.*” When asked by the probation officer for any explanation that he would like to give for the incident leading to the death of the deceased, the prisoner replied: “*No I don’t want to talk about it, am sorry for what happened, we were friends all the time.*”

- [13] For the offence of manslaughter, the maximum sentence prescribed pursuant to Section 5 of the **Offences Against the Person Act**, Cap 4.21 of the Revised Laws of St. Christopher and Nevis 2000, is imprisonment for life, with or without hard labour.
- [14] This Court is in agreement with the Crown that a custodial sentence is warranted in the circumstances of this case and that the starting point in determining a sentence in this case should be fifteen (15) years.
- [15] The prisoner pleaded guilty before the close of the prosecution case to the second count on the indictment. In seeking to determine the appropriate discount, the court pays heed to the dicta of Byron CJ in the case of **Desmond Baptiste v R**.⁴ and also that as stated by Lord Taylor CJ in **R v Paul Edward Buffrey**.⁵ While the defendant is entitled to a considerable discount, there is no absolute rule as to what that discount will be. The court will accord the prisoner a discount of twenty five percent (25%) based on his plea. A full discount of one third (1/3) of the sentence is not warranted. The Crown had called some ten (10) witnesses by the time that the plea was taken.
- [16] The court has also considered the Social Inquiry Report and the written and oral submissions made by Counsel in this case. Regard has also been had to those

⁴ Ibid., p.2

⁵ (1993) 14 Cr. App. R. (S)

authorities that Counsel for the prisoner has asked this Court to consider during her plea in mitigation. While relevant, many of these authorities were concerned with individuals who were minors at the time of the commission of the offence.

[17] The court has considered the other cases offered for the Court's consideration including **The Queen v Roy Williams**,⁶ **Shonovia Thomas v The Queen**⁷ and **Kenneth Samuel v The Queen**⁸.

[18] Mindful always that the sentence of this Court must reflect the crime as well as the individual offender the sentence of this Court is that the prisoner is to serve a term of imprisonment of eight and a half (8 ½) years with hard labour. The time the prisoner has spent in custody since 25th July 2012 is to be taken into account and deducted from that sentence. I would encourage the prisoner to take advantage of any anger management counseling available to him during this time.

Marlene I. Carter
Resident Judge

⁶ High Court Criminal Case no 13 of 2007, Antigua and Barbuda

⁷ HCRAP 2012/006 (unreported)

⁸ SVGHCR2005/0007