

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

STATE OF SAINT VINCENT AND THE GRENADINES

SVGHCR2013/0027

BETWEEN

THE QUEEN

AND

CLAYDON WARREN

Appearances: Mr. Collin John with Mr Kareem Nelson for the Crown, Mr Stephen Williams for the Defendant

2014: Oct 20

Dec 11

DECISION - SENTENCE

[1] **Henry, J. (Ag.):** The Defendant was indicted on May 2, 2013 on a charge of murder contrary to section 159(1) of the Criminal Code¹. The particulars of the offence charged that "on a date unknown between the 24th April 2012 and the 2th day of April 2012 at Park Hill in the State of Saint Vincent and the Grenadines with malice aforethought" Claydon Warren "caused the death of Dennis Nickie by an unlawful act." The accused was arraigned and pleaded not guilty in the criminal assizes which commenced on May 7, 2013. The matter was adjourned repeatedly and traversed in July 2014 to the next assizes. A jury was empanelled on October 20, 2014 and the matter proceeded to trial with the prosecution calling two witnesses² before the luncheon adjournment at 11.55am. When the trial resumed at 1.10pm that day, learned

counsel for the defendant, Mr Stephen Williams requested that the charge be put to the defendant again.,On his re-arraignment, the defendant affirmed his plea of not guilty of murder and pled guilty to manslaughter. The jury was directed to return a formal verdict of guilty to manslaughter and did so. The defendant was convicted and is before the court for sentencing.

BACKGROUND FACTS

[2] Learned counsel, Mr Kareem Nelson filed written submissions on behalf of the Crown on December 8, 2014 in which he summarized the factual background, as recounted by the witness Orlena Jennetta Lavia and as foreshadowed in the depositions. In his written submissions filed on December 10, 2014, learned counsel for the defendant, Mr Stephen Williams indicated that the defendant wishes to rely on the caution statement he gave to the police which is recorded at page 22 of the deposition. Except for the details surrounding what weapon was used to inflict the injuries to the deceased and the number of times he struck the deceased, the defendant's account in the caution statement corresponds materially to the account given by witnesses who testified at the preliminary inquiry. The facts gleaned from those accounts are:

1. On April 25 2012, the defendant and the deceased Dennis Nickie were doing work at the home of one Jessie Tuitt at Park Hill. Around 3.00pm, they were heard arguing in the public road just outside Tuitt's house.
2. During the argument, Orlena Lavia an occupant of Jessie Tuitt's house, saw the defendant with a cutlass in his hand hitting ("planning") the deceased across his back with it. Ms Lavia approached the men and asked the defendant to give her the cutlass. He hesitated for while but then relented and handed it to her. Ms Lavia went back into the house and left the deceased and the defendant in the public road.
3. When she re-entered the house, Ms Lavia looked through the window into the road and saw the deceased striking the defendant with a stone across his face. The deceased then walked down the road. The defendant remained in the road for a few seconds and then pulled up a piece of iron from the side of the road, between the boundary line and the road and followed after the deceased. The defendant denies that he used a piece of iron and insists that he hit the deceased once with a piece of board which he subsequently handed to the police.
4. The defendant proceeded to strike the deceased with the pipe as a result of which he sustained several injuries to his abdomen. The deceased went home and went to bed. The following morning, his sister discovered his lifeless body lying on his mattress on the living room floor. He was later pronounced dead by Dr. McKree. The post mortem report³ indicates that the deceased sustained fractures to the 7th, 8th and 9th ribs while the 10th rib was fractured with surrounding intercostals hemorrhage. The spleen had a 7 cm laceration accompanied by a 200ml blood clot. The cause of death was recorded as hypovolemic shock due to laceration of spleen due to blunt trauma to the abdomen. Dr McKree explained at the preliminary inquiry that the deceased "received a severe blow to the abdomen via a blunt object which led the spleen to rupture and

bleed out causing shock due to internal blood loss. She opined that a severe degree of force would have to have been used. This medical opinion is consistent with the accounts of the several witnesses and also the accused's version of events.

5. During their investigations, the police recorded a caution statement from the defendant in which he denied hitting the deceased with a cutlass or pipe. He was arrested and charged for the offence of murder.

SOCIAL INQUIRY AND MEDICAL REPORTS

[3] The defendant Claydon Calvin Warren was interviewed at the prison by case worker Mrs Camille Johnson on October 31, 2014. He is 42 years of age, having

³ See pages 26 to 27 of the deposition and also the deposition of Dr Barnard at page 4 to 5.

being born to Ms Veronica Warren and Mr Christel Richardson on July 22, 1972. During his formative years the defendant lived in Questelles Peas South Rivers with his maternal grandparents, the late Ms Estina Warren and Mr Monroe Lampkin and his aunt Ms Alvita Lucas. From his account given to the case worker, the defendant has no attachment to his parents. His mother reportedly and presumably in his formative years, travelled back and forth between St. Vincent and the Grenadines and Trinidad until she migrated to the United States where she now resides. His father lives in Barbados. He has two maternal sisters and no brothers.

[4] The defendant is single and has no children. He lived alone in South Rivers where he grew up, until the time of his incarceration on remand in the instant matter. He attended the South Rivers Primary School and on passing the School Leaving examinations, he was placed at the Bishop's College Secondary, Georgetown where he started at form 2 and ended school at form 3 due to his family's dire financial straits which prevented him from continuing his education, although he was promoted to form 4.

[5] On leaving school, the defendant did odd jobs until 1992 when he wrote and passed the police examinations to enter police school. Although successful in those exams, he was not admitted to police school because he intervened in a fight between two men which led to a struggle between him and one of them who reported the matter to the police. He was denied entry to the police program as a consequence of that report and a subsequent criminal trial in which he prevailed. He subsequently gained employment as a labourer and an irregular van conductor, earning a wage of roughly \$960.00 per month at the latter job.

[6] The defendant states that he was a regular church goer in his formative years and got baptized at the South Rivers Pentecostal Church in 2003 but stopped going to church after January 1, 2011. His leisure activities include playing cricket, other sports, dancing and feting. He also admitted to the case worker that he drank rum regularly.

[7] The defendant does not have a history of any physical or mental illnesses and claims that he has never been admitted to the Milton Cato Hospital or the Mental Health Centre. This is borne

out in the medical report dated December 10, 2014, prepared by Dr. Naganathna Gurappa-Jaye at the court's request. He was declared to be in good health. No evidence of any communicable diseases was found and his cardiovascular nervous-system, genitourinary and musculoskeletal systems were all unremarkable. The doctor noted and declared him to be both physically and mentally fit.

[8] To his credit, the defendant has no previous convictions. He is described by the case worker as being respectful, cooperative and polite during the course of the interview. She also noted that he displayed a quiet demeanour. The defendant reportedly told the case worker that "he feel real sorry because it was an innocent death", and "we both needed to stop drinking alcohol, if we were sober this would not have happened." He described to the case worker an incident in which he and the deceased had an argument while drinking together, which led to a physical fight in which they both hit each other and then went back to drinking. The defendant and the deceased were neighbours who attended village functions and socialized together.

[9] The defendant has been a model prisoner since his incarceration, whose behavior has been described by the prison authorities as "exceptional". By his own account he gets along well with persons in his community. Enquiries of persons in his village revealed that he is regarded as "a good person, but once he drinks he is very troublesome sometimes and would even curse bad words and fight." It is quite telling that his relatives stated that he started drinking after he did not get into the police force and has not stopped since. He indicated to the case worker that if released into civil society he would "try to encourage people to keep away from alcohol and let them know the effects of it; he would go back to church on -a regular basis and find a 'lover' to share his life with."

[10] In her report the case worker urged the court to take into account the defendant's grave financial situation while growing up, which effectively put an end to his formal education at secondary school level, also his lack of attachment to his parents and his disappointment at not being granted entry to the police force. She also pointed out that "alcoholism and alcohol abuse are due to many interconnected factors including genetics, how you were raised, your social environment and your emotional health and that the effects vary from person to person." She concluded that the defendant's upbringing suggests that throughout his life he was faced with stressful situations that led to substance dependence which might lead him to intimidate persons in his community. She considers him a good prospect for reform if he is provided with opportunities for alcohol rehabilitation.

SUBMISSIONS - CROWN

[11] In written submissions filed on December 8, 2014, Mr Kareem Nelson for the Crown referred to sentencing objectives rehearsed in the cases **R v Sargeant**⁴ and **Desmond Baptiste v the Queen**⁵, cited with approval by Justice Floyd in the case of **R. v Sylvester Lindsay**⁶ where he identified the classical principles of sentencing as being retribution, deterrence, prevention and rehabilitation and stated:

"the sentencing process is multi-faceted. Sentencing seeks to promote respect for the law and an orderly society. The offender and the offence are considered by the court . "

Learned counsel Mr Nelson also urged on the court that retribution and rehabilitation are the more relevant principles in the instant case, the defendant being a "virgin to the law" and having regard to the fact that the offence was not premeditated.

[12] Learned Crown Counsel submitted further that manslaughter involves the loss of life and is a serious offence which makes it imperative that perpetrators are punished to reflect society's abhorrence for offences of this kind. He also invited the court to take into account "the recurring echo of members of the prisoner's community" that the defendant is a good person when he is sober but becomes troublesome when he drinks and the defendant's own admission and acknowledgment of his drinking problem. He cited the case of **The Queen v Keon Edwards**⁷ as authority for the submission that a custodial sentence should be the starting point for sentencing in a case of manslaughter⁸. He also submitted on the authority of the decision in **Kenneth Samuel v The Queen**⁹ that the benchmark for manslaughter is 15 years imprisonment. He referenced the decision of the Court of Appeal in the case of **Desmond Baptiste v R**¹⁰ where the court endorsed the practice of English courts of awarding up to one third discount on an early guilty plea. In delivering the decision of the court Chief Justice Byron (as he then was) stated *inter alia*:

"The defendant who had pleaded guilty is entitled to a considerable discount. While suggesting a discount of the order of one third however, Lord Taylor, CJ stressed in Buffrey that 'it would be quite wrong ...to suggest that there was an absolute rule as to what the discount should be. Each case must be assessed by the trial Judge on its own facts and there will be considerable variance between one case and another .' ... Clearly, the earlier the defendant pleads guilty,

7 BVIHCR2009/0007

8 Para. 27 where Justice Hariprashad-Charles stated "Bearing in mind the loss of life caused by manslaughter by reason of provocation, the starting point for sentencing should be a custodial sentence."

9 SVGHCRZ00S/0007

10 SVGHCR2003/0008 at paragraph 8.

the greater the likelihood that he will receive the full discount permissible. ... The discount should be applied not to the maximum sentence possible under the statute but rather to a notional sentence the sentencer might have given save for the guilty plea."

[13] Learned counsel Mr Nelson identified the mitigating factors in the instant case as an early guilty plea, no prior convictions and a favourable probation report. He identified the brutal manner in which the deceased was killed as the sole aggravating factor. He concluded that the aggravating factor is outweighed by the mitigating factors and that the tendency of the court should be towards a custodial sentence on the lower end of the sentencing scale. In this regard, he relied on dicta of the court in the case of **Winston Joseph v the Queen**¹¹ in which Chief Justice Byron (as he then was) opined:

"The actual sentence imposed will depend upon the existence and evaluation of aggravating and mitigating factors , ... It is not enough for the court merely to identify the presence of aggravating and mitigating factors when sentencing. A sentencing court must embark upon an evaluative process . It must weight the aggravating and mitigating factors. If the aggravating factors are outweighed by the mitigating factors then the tendency must be toward a lower sentence. If however, the mitigating factors are outweighed by the aggravating factors the sentence must tend to go higher. "

SUBMISSIONS - DEFENDANT

[14] Learned counsel Mr Stephen Williams also cited the case of **Kenneth Samuel v The Queen**¹² as a case in which the sentencing principles were outlined. He agrees with Crown Counsel Mr Nelson that in the instant case the applicable principles are retribution and rehabilitation and that the benchmark of 15 years

¹¹ Criminal Appeal No. 4 of 2000 at paragraph 17

¹² Supra.

imprisonment is established 'in cases of manslaughter due to extenuating circumstances such as provocation. He submits that the defendant is entitled to a 1 /3 discount by virtue of his guilty plea. He also noted that the defendant is remorseful, has no previous convictions and was provoked in the instant case and these are mitigating factors to be taken into account. He submitted that the only aggravating factor is that the defendant struck the deceased causing his death and accordingly as the mitigating factors outweigh the aggravating factor, this should operate in the defendant's favour resulting in a lesser sentence. Like learned counsel Mr Nelson he cited the case of **Winston Joseph**¹³ in support and submitted that a sentence of 5 to 6 years imprisonment would be suitable in all of the circumstances.

PLEA IN MITIGATION

[15] In his plea in mitigation learned counsel Mr Williams stressed that the instant case does not fall into the category of the worst cases alluded to by Barrow J.A. at paragraph 20 in the **Kenneth Samuel** case where he said that the starting point in imposing a sentence is not necessarily or even usually the maximum penalty and as a matter of reasoning, the maximum penalty must be appropriate only for the worst cases. Mr Williams submitted that the other factors mentioned by Barrow J.A. are present in the instant case and include the defendant's cooperation with the police, his remorse and the absence of a criminal record.

LAW - PENAL TY

[16] Section 161 of the Criminal Code¹⁴ provides:

" Any person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute murder, who does the act which causes death in the heat of passion caused

¹³ *Supra*.

¹⁴ *Ibid*.

by sudden provocation, as hereinafter defined, and before there is time for his' passion to cool, is guilty of manslaughter only."

Section 163 provides:

" (1) Any person who, by any unlawful act or omission, causes the death of another person is guilty of manslaughter . For the purposes of this section an unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily harm.

(2) Any person who is guilty of manslaughter is liable to imprisonment for life."

PRINCIPLES OF SENTENCING

[17] Both counsel have correctly identified the sentencing principles which guide the court as enunciated in the **Sargeant**¹⁵ case and adopted in the **Desmond**

Baptiste ¹⁶ case. In commenting on the four principles in the **Baptist e** case, Chief Justice Byron (as he then was) in describing the principles said *inter alia*:

"Retribution at first glance tends to reflect the Old Testament biblical concept of an eye for an eye , which is no longer

tenable in the law . It is rather a reflection of society' s intolerance for criminal conduct.

Deterrence is general as well as specif i c in nature . The former is intended to be a restraint against potential criminal activity by others whereas the latter is a restraint against the particular criminal

¹⁵ *Supra* .

¹⁶ *Supra*.

relapsing into recidivist behavior. ... These sentences tend to lose . their potency with the passage of time.

Prevention - The goal here is to protect society from those who persist in high rates of criminality Such sentences are more suitable for repeat offenders.

Rehabilitation - Here the objective is to engage the prisoner in activities that would assist him with reintegration into society after prison."

[18] In determining a just sentence in any case, the court must also, take into consideration the defendant's character, the nature and gravity _of the offence, the manner of execution, the subjective factors which may have influenced the defendant's conduct and the degree of his culpability. I have no doubt in my mind that the deceased suffered a significant amount of pain in the hours after the fight with the defendant, as a result of the blows he received from the defendant that fateful day. That pain would have been dulled only by the alcohol he drank earlier that day as he did not receive medical attention and there is no evidence that he took any pain medication or sedative. He met a terrible and untimely death. I have reviewed the cases cited by both counsel and note that the sentences for manslaughter in the region range from a low of 7 years to a statutory maximum of life imprisonment. Learned Deputy Director of Public Prosecutions Mr Colin John proposed at the sentencing hearing that an appropriate sentence in all of the circumstances would fall within the range of 7 to 8 years.

ANALYSIS

[19] I note with concern the prevalence of incidents in the community resulting in death arising during alcohol induced disputes. Obviously the message of the dangers of alcohol is not getting through to those who most need to be forewarned. In sentencing the defendant I will temper justice with mercy. I remain cognizant that the sentence should reflect the retribution and rehabilitation.

[20] The medical report of Dr McKree¹⁷ multiple objectives of general deterrence, supports the defendant's version of events that he received a blow to the right ear with a stone. It must not go unremarked that any assault to a person's head would usually elicit a defensive response, including a physical one. While I have no doubt that the defendant initiated the physical altercation on April 25, 2012, the entire incident consisted of exchange of blows between the deceased and the defendant perhaps not inconsistent with previous similar exchanges between them. There was no significant lapse of time between the assault by the deceased and the defendant's attack with the pipe; it seems to have been an immediate retort. It does not appear that the attack by the defendant was prolonged and although he lost control, he seems to have been easily entreated in the first instance by Ms Lavia and other persons who intervened in the fight later on, suggestive of an explosive but short-lived outburst. The spontaneity of the attack and lack of premeditation is a mitigating factor which the court considers, as is the fact that the deceased actually assaulted the defendant with a stone. The court remains mindful that the defendant initiated the fight.

[21] I have considered the facts and circumstances which surround the commission of the offence, particularly the aggravating and mitigating factors in this case. I have also had due

regard to the issues, the submissions by learned counsel for the Crown and for the defendant, the established principles which guide sentencing, the defendant's good character, the nature and gravity of the offence, the manner of execution, the subjective factors which may have influenced the defendant's conduct and the degree of his culpability which I have determined to be at the lower end of the continuum, based on the immediacy of his response and the absence of evidence of premeditation. I have studied the social inquiry report prepared by the case worker Mrs Camille Johnson and the medical report

17 See page 29 of the deposition

prepared by Dr. Gurappa-Jaye I have also had regard to the timing of the entry of the guilty plea. In favour of the defendant, I make the assumptions that at the time he inflicted the injuries which led to Mr Nickie's death the defendant lost his self control as a result of the blows he received from the deceased with what he described as a piece of the brick; this loss of self-control under the circumstances was reasonable and sufficiently excusable to reduce the gravity of the offence to manslaughter by reason of provocation¹⁸ I have considered that the defendant and the deceased just prior to the altercation on April 25, 2012 had consumed a quart of strong rum between them and had started on another quart immediately before the fight. For most persons that amount of alcohol significantly influences their perception, capacity to reason and behavior. No doubt the defendant and the accused were functioning at less than optimum mental and reasoning capacity, although I recognize that intoxication does not provide a defence to a criminal charge.

[22] The defendant has expressed remorse to the case worker and also to the court today. In his very candid remarks to the court Mr Warren said:

"I am very sorry to take someone's life, especially a friend and someone you are really close to, because I know that life can never be replaced. Sometimes it definitely haunts me to remember the good times we used to have. I think I learnt a very positive lesson what the abuse of alcohol can do. I think I plan to go out there and share the experience with other people about the pain alcohol can really cause."

I do not doubt that the defendant is genuinely remorseful for the unnecessary loss of life of the deceased whom he describes as his friend. The court also notes that the testimony of Dr. Tracee Barnard at page 5 of the deposition suggests that the victim could have survived if he had obtained medical treatment for his injuries.

18 See AG's Ref. Nos. 74, 95 and 118 of 2003 (Suratan and others) (2003) 2 Cr. App. R. (S.) 42

[23] I am satisfied that Mr Warren should receive the recommended discount for the plea of guilty he entered on the first day of the trial which contributed to savings in time and expense. The defendant has been on remand from the date of his arrest on April 28th, 2012, a period of 2 years and 8 months for which he will receive credit as time already served. The sentence which is being imposed in this case seeks to address the need for public protection, reflect the public's abhorrence of these types of crimes and hopefully rehabilitation of the defendant. The public interest would be advanced if Mr Warren were exposed to rehabilitation services such as those provided by Alcoholics Anonymous. The prison authorities are encouraged if resources permit it,

to arrange for the defendant to participate in such sessions during his imprisonment and also to pursue studies leading to GSCE qualifications.

SENTENCE

[24] In view of the surrounding circumstances of this case, the defendant's good character, the evidence of provocation, the plea in mitigation, the fact that mitigating factors outweigh the aggravating factors and the other reasons outlined before, the justice of the case demands that a custodial sentence be imposed. The defendant will receive the maximum one third discount for his guilty plea early in the criminal process. His sentence is further discounted in light of the mitigating factors in this case and his good character. Mr Claydon Warren is sentenced to 6 years imprisonment for the offence of manslaughter of the late Dennis Nickie less the 2 years and eight months already served while on remand pending his trial.

[25] I wish to express thanks to both counsel for the well-research submissions and for the able and professional manner in which this trial was conducted.

Esco L. Henry

HIGH COURT JUDGE (Ag.)