

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

SAINT LUCIA

CRIMINAL CASE NO. SLUCRD 2008/1256

BETWEEN:

THE QUEEN

Claimant

AND

NEIL ALVIN PETER

Defendant

Appearances:

Mr. Leslie Prospere, Counsel for the Defendant

Mr. Giovanni James, Crown Counsel for the Crown

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2013: April 16
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JUDGMENT ON SENTENCING

- [1]. **CUMBERBATCH, J.:** The defendant attended what is called in local vernacular a 'bram' at Saaman's Park held on July 5, 2008 by the recently graduating students of the Entrepot Secondary School. At its conclusion, the defendant among others went to the bus stop at the Choc round-a-bout to await transportation home. One Kevnick Edwards (the deceased) along with his friends was also awaiting transportation. When the minibus arrived an argument ensued between the driver and some of the awaiting passengers about the fare demanded by him. The defendant became involved in an altercation with the deceased during which he inflicted stab wounds to him

which resulted in his death. Dr. Stephen King opined that the cause of death of the deceased was hemorrhagic shock secondary to incised wounds the main wound being to the right armpit.

- [2]. The defendant was indicted for the offence of murder and following a jury trial he was convicted of the lesser count of manslaughter as a result of provocation. The court ordered a pre-sentence report written submission by counsel and set a date for a sentencing hearing.

[3]. **THE HEARING**

The pre-sentence report disclosed that the defendant was the product of a common law union between his parents. That union was dissolved when he was about one (1) year old. For some period of time the defendant lived with an elder sister who he describes as being more of a mother to him than his biological mother. That sister however died tragically and the defendant resumed residing with his mother.

- [4]. The defendant's mother stated that when the defendant was in his teenage years he became stubborn and rebellious and she found it difficult to communicate with him as he always wanted his own way. She went on to state that she received negative reports about the defendant keeping bad company and smoking marijuana. She cautioned him about his conduct but saw no improvement. Similar sentiments of the defendant were echoed by his sister Emily who stated he usually associates with bad company when he goes to Morne Serpent where his father resides. I will refer to other parts of the pre-sentence report later in this judgment.

- [5]. Mr. Prospere both orally and in his written submissions addressed the court on what he considered to be the applicable principles of the law on sentencing. Counsel stressed that his client was aged just seventeen (17) at the time of this incident and that he was set upon by the deceased and his friends. He considered the following to be the aggravating factors herein to wit:

1. The seriousness of the offence of manslaughter;
2. The loss of life;
3. The deceased sustained multiple stab wounds at the hands of his client;
4. The history of disciplinary issues in which the defendant was involved at school, and as an inmate at the Bordelais Correctional Facility.

[6]. Counsel for the defendant went on to submit the following as the mitigating factors to be considered in favour of his client:

1. The defendant's young age of seventeen (17) at the time of the commission of this offence;
2. The hitherto clean criminal record of the defendant;
3. The defendant's co-operation with the police;
4. The remorse expressed.

[7]. Counsel further submits that there was an abundance of evidence of self-defence which the court ought to consider as a mitigating factor. I do not accept that submission which in any event was not supported by authority. Suffice it to say however, that the jury by its verdict obviously rejected the defence of self-defence. I will make further reference to Mr. Prospere's submissions later in this judgment.

[8]. Mr. James, for the crown, also addressed the court in his written submissions as to what he considered to be the aggravating and mitigating factors herein to wit:

AGGRAVATING FACTORS

1. The seriousness of the offence in that death resulted from the stabbing;

2. The defendant brought a knife to a school event and was armed with that knife immediately prior to the commission of the offence;
3. The defendant has a propensity to get into fights;
4. Abuse of marijuana.

MITIGATING FACTORS

1. The finding of provocation by the jury;
2. The defendant is remorseful;
3. The defendant's age at the time of the commission of the offence;
4. The defendant co-operated fully with the police.

[9]. THE LAW

Both counsel urged the court to apply the classical principles of sentencing namely retribution, deterrence, prevention and rehabilitation to the facts and circumstances of this case. I will now do so.

RETRIBUTION

The defendant inflicted five stab wounds to the deceased during their altercation one of which proved fatal. This incident occurred after a social event which the defendant attended armed with a penknife. By virtue of the fact that he was seen vomiting at the bus stand and from his own admission he had consumed excessive amounts of alcohol. Thus in those circumstances his careless use of the knife with which he was armed was inevitable.

Defence counsel submits that because the defendant resided in a secluded area he considered it necessary to arm himself at night. There was no evidence adduced either at the trial or at the

sentencing hearing that the defendant had been a victim of physical attacks whilst going home to justify him carrying around a deadly weapon to a social event. I find it unacceptable for a young man attending a social event such as the one held that night to be armed as he was. Counsel however submits that the community's abhorrence for the defendant's conduct would not be vindicated by an extreme sentence but rather by a deserved one having regard to the extenuating circumstances of this offence.

The court is conscious of the alarming increase of offences of homicide which occur for trivial or spurious reasons and must therefore show its abhorrence for this kind of conduct.

DETERRENCE

This ground can be specific to the defendant and general to the community at large. The pre-sentence report paints an unimpressive picture of the defendant's character in the opinions of his mother and siblings, more particularly his use of marijuana and his preference for bad company. Indeed after he was charged with the serious offence of murder the defendant found himself involved in separate incidents of violence which resulted in him being shot and injured in one and another which resulted in him being chopped in the face.

This defendant has anger management issues and seems to have a propensity for violence. His use of marijuana and excessive consumption of alcohol if left unattended would certainly be the trigger for more acts of violence by him. As such the court must take these factors into account in determining an appropriate sentence herein.

PREVENTION

Though the defendant is a first offender, the court views with concern his seeming propensity for violence and unlawful conduct. However, there is no evidence before the court that he is considered to be a danger to the society thereby warranted a protracted sentence.

REHABILITATION

There is no doubt that this defendant is in need of rehabilitation for his drug and alcohol abuse and his propensity for violence. His recent acts of insubordination at the Bordelais Correctional Facility do not make for a good prognosis for early rehabilitation.

- [10]. However, through counsel's submissions, the defendant has expressed an interest in pursuing further academic studies and in that regard has stated his desire to be enrolled in the academic program at the Bordelais Correctional Facility. The defendant in the pre-sentence report has expressed remorse for taking the life of the deceased.

The defendant will however require appropriate counseling to rid him of his anger management and dispute resolution issues and his drug and alcohol abuse.

- [11]. I find the following to be the aggravating and mitigating factors herein:

AGGRAVATING FACTORS

1. The violent death of the deceased;
2. The number of injuries inflicted by the defendant on the deceased;
3. The defendant's decision to arm himself with a knife whilst attending a social school event;
4. The defendant's general indiscipline and propensity for violent conduct.

MITIGATING FACTORS

1. The defendant's youthful age at the time of the commission of the offence;
2. The defendant's expression of remorse;
3. The defendant's co-operation with the police by promptly producing the knife used to stab the deceased and his clothing.

[12]. SENTENCE

I have considered and analysed the aggravating and mitigating factors herein and find that the aggravating factors outweigh the mitigating ones. This offence though not planned and premeditated is nevertheless a violent one more so because of the defendant's repeated use of a weapon with devastating results.

- [13]. The defendant at the time of the commission of this offence was seventeen (17) years old, a matter which the court must take into consideration in determining an appropriate sentence.

In **Desmond Baptiste v The Queen** 6 Byron CJ stated at paragraph 30:

"On the issue of age of the offender, a sentencer should be mindful of the general undesirability of imprisoning young first offenders. For such offenders the Court should take care to consider the prospects of rehabilitation and accordingly give increased weight to such prospects. Where imprisonment is required, the duration of incarceration should take such factors into account. In the same vein, in cases where the offender is a mature individual with no apparent propensity for commission of the offence, the sentencer may also take this circumstance into account in weighing the desirability and duration of a prison sentence. As with first

time offenders, the more serious the offence, the less relevant will be these circumstances."

[14]. In addressing the importance of the circumstance that the offender was committing crime for the first time Byron CJ stated that this factor should be left to the discretion of the sentencer as a matter that is to be taken into account with all the other mitigating circumstances of the offence. The more serious the offence the less relevant will be the circumstance.

[15]. In Blackstone's Criminal Practice 2009 at Appendix 8 Sentencing Guidelines Council Guidelines under the heading **Manslaughter By Reason Of Provocation** it is suggested that the following factors are to be taken into consideration:

1. The sentences for public protection must be considered in all cases of manslaughter;
2. The presence of any of the generally aggravating factors identified in the Council's ***Guideline Overarching Principles; seriousness*** or any of the additional factors identified in this guideline will indicate a sentence above the normal starting point;
3. This offence will not be an initial charge but will arise following an initial charge of murder. The council Guideline ***Reduction in sentence for a guilty plea*** will need to be applied with this in mind. In particular, consideration will need to be given to the time at which it was indicated that the defendant will plead guilty by reason of provocation;
4. An assessment of the degree of provocation as shown by its nature and duration is the critical factor in the sentencing decision;
5. The intensity, extent and nature of the loss of control must be assessed in the context of the provocation that preceded it;

6. Although there will usually be less culpability when the retaliation to provocation is sudden, it is not always the case that greater culpability will be found where there has been a significant lapse in time between the provocation and killing;
7. It is for the sentence to consider the impact on an offender of provocative behavior that has built up over a period of time;
8. The use of a weapon should not necessarily move a case into another sentencing bracket;
9. The use of a weapon may reflect the imbalance in strength between the offender and the victim and how that weapon came to hand is likely to be far more important than the use of the weapon itself;
10. It will be an aggravating factor where the weapon is brought to the scene in contemplation of use before the loss of self-control (which may occur sometime before the fatal incident);
11. Post offence behavior is relevant to the sentence. It may be an aggravating or mitigating factor. When sentencing the judge should consider the motivation behind the offender's actions.

[16]. The difficulties faced by the court in sentencing in cases where matters of provocation arise are aptly dealt with in the decision of the English Court of Appeal in *R V Derek Taylor* 1978 9 Cr. App. R. (s) 175. In that decision Lord Lane stated thus:

"The jury came to the conclusion that that attack was the subject of provocation, namely that a reasonable person in those circumstances might have reacted to the provocation in the same way as this man did.

We repeat, sentencing in these circumstances is an almost impossible task. It is not a matter of exact science at all. We are assisted to some extent, in a way in which the judge was not assisted, by a prison report which gives this appellant a glowing prison character. He is no trouble at all. He is extremely remorseful. He works hard and there is no reason of course for believing that anything like this will ever happen again.

There are two objects in view which the sentencer must have in mind: first, of all the necessity to ensure that the criminal expiates his offence. For that of course a term of imprisonment is almost always necessary. Secondly, although to some extent where there is provocation it may seem illogical, it has got to be a lesson to other people that if possible they should keep their tempers and not be provoked in such circumstances. Bearing those two matters in mind, the judge then has to determine what the least period is which will reflect those two matters”.

- [17]. The court must be mindful of the defendant's youthful age at the time of the commission of this offence and the principles of sentencing cited aforesaid must be considered and applied with that in mind. The revelations of the defendant's character in the pre-sentence report do not paint a picture of him as being the proverbial choir boy. I am however encouraged by his expressed thirst for higher academic learning whilst an inmate at the Bordelais Correctional Facility.
- [18]. This offence carries a maximum sentence of life imprisonment. This was a contested matter and defence counsel quite correctly opined in his submissions that his client would not benefit from the type of reduction in sentence available to those who enter a guilty plea. The sentencing guidelines suggest a benchmark of fifteen (15) years imprisonment as an appropriate starting point.

- [19]. There was evidence adduced during the trial that just before the fight the defendant was the recipient of a hard slap from the deceased who also yanked him out of the minibus in which he was seated which in my view was substantial evidence of acts of provocation. Hence the question of provocation was a live one at the trial though however, it was apparently ignored by the defence who pursued a defence of self-defence which was not unreasonable in the circumstances.
- [20]. I find that the provocation was not prolonged but sudden. However the defendant's repeated use of a weapon was unacceptable. I also find it unacceptable that the defendant for no lawful or reasonable excuse had possession of a weapon whilst attending a social event.
- [21]. In the circumstances, having taken into account the defendant's age and degree of culpability the court finds that twelve (12) years imprisonment to be the benchmark herein. I will deduct three (3) years for the defendant's clean criminal record and two (2) years for his co-operation with the police. Accordingly, he is sentenced to seven (7) years imprisonment. The defendant will be credited for all time spent on remand awaiting trial. He will also be enrolled in programs for anger management and dispute resolution, drug and alcohol use and academic programs.



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FRANCIS M.CUMBERBATCH
HIGH COURT JUDGE

