

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

SAINT LUCIA

CRIMINAL CASE NOS. SLUHCR 2011/0041, 0042

BETWEEN:

THE QUEEN

Claimant

AND

LANCE BLADES

Defendant

Appearances:

**Mr. Leslie Mondesir, Counsel for the Defendant
Ms. Tina Mensah, Crown Counsel for the Crown**

.....
2013: May 29
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JUDGMENT ON SENTENCING

- [1]. **CUMBERBATCH, J. :** On April 27, 2005 the defendant was charged with the offence of murder committed on one Julian Sonny (the deceased) on Saturday 2nd April, 2005. A preliminary enquiry was held and on the 19th August 2008 he was committed to stand trial for the offence charged. On the 7th November, 2011 the defendant was indicted by the Director of Public Prosecutions for the offence of murder contrary to section 86(1) of the Criminal Code 2004 to which he entered a plea of not guilty at his arraignment. He was subsequently indicted on the 20th June, 2012 for the offence of murder contrary to section 85(a) of the Criminal Code to which charge he pleaded guilty at his arraignment. The court satisfied itself that the defendant fully understood the nature of the

plea and that he had had the benefit of legal advice prior to him so doing. The court after the allocutus ordered a pre-sentence report and psychiatric report be provided and set a date for a sentencing hearing.

[2] **THE FACTS**

The rather bizarre facts of this matter reveal that on or around Friday 25th March, 2005 the defendant was contacted by one Doris John who indicated that she was having problems with her husband and wanted him killed. The defendant agreed to do so and the parties further agreed that the defendant would be paid the sum of four thousand (\$4000.00) to kill Doris John's husband.

[3] The defendant was told that Doris John's husband had been continuously abusing his stepdaughter, the daughter of Doris John, despite several efforts by her and the church pastor to persuade him to discontinue this distasteful activity. Hence she decided that her husband had to be killed. The defendant was given information as to where John's husband worked and that he owned a red van in which he slept. The defendant however, did not know John's husband well as he had only seen him once.

[4] On April 2, 2005 the defendant whilst armed with a gun walked to the van in which he shot a male person who he observed therein. It was later discovered that the man the defendant shot was not John's husband but his workmate who also slept in the van from time to time.

[5] **THE HEARING**

The psychiatric report reveals that the defendant though diagnosed with mild depressive disorder and anti-personality traits did not display any psychotic features. Dr. Swamy did however allude to this defendant's cannabis abuse in the past. The court was satisfied that the unchallenged report

of Dr. Swamy presented no indications that the defendant at the material time suffered from any mental or psychiatric disabilities.

[6] The defendant's mother describes him as having had a normal upbringing but at the onset of his adolescence he displayed anti-social habits such as bullying smaller persons and getting into fights. His teachers at the Plain View Combined School considered the defendant to be a respectful student who attended school regularly and was well disciplined and hard working. However when the defendant attended the Vieux Fort Secondary School his previous impeccable behavior changed dramatically. There he was considered to be a student who presented serious disciplinary problems such as gambling, assaulting a student, having alcohol in his possession, poor attendance and refusal to write end of term exams. Not surprisingly he was expelled from school at age sixteen (16).

[7] The defendant informed the probation officer that he was eighteen (18) years old at the time when he committed this offence and that he did so at the behest of friends who had provided him with money food and clothing hence he felt indebted to them. He has expressed regret and remorse for this incident.

[8] Mr. Mondesir for the defendant in his written submissions addressed the court on the defendant's background and personality as stated in the pre-sentence report. He further submitted that the defendant co-operated fully with the police from the time of his arrest and that the statements given to the police by him comprised all of the events in this matter. As such the crown's case rested almost entirely on the statements given by the defendant.

- [9] Defence counsel also went on to address the court on what he considered to be the applicable law and principles of sentencing herein and referred the court to several authorities. He stated that the aggravating and mitigating factors herein are as follows:

MITIGATING FACTORS

1. the defendant has pleaded guilty;
2. the defendant is genuinely remorseful. The defendant co-operated with the police from the onset by giving full confessions about his participation in this incident. The defendant also expressed his remorse to the probation officer by expressing his regret in claiming the life of an innocent man;
3. The defendant was eighteen (18) years old at the time of the incident;
4. The defendant has been on remand since April 27, 2005, a period of seven (7) years;
5. The defendant has spent time in custody awaiting sentence;
6. There has been an inordinate delay in the administrative system in bringing the matter from the Preliminary Inquiry stage before the High Court for disposal;
7. The pre-sentence report which has indicated a lifetime of physical and emotional abuse, neglect by his parents, drug and alcohol abuse as a result and antisocial behavior by the defendant.

AGGRAVATING FACTORS

1. It was a murder committed in the course of an arrangement;
2. The use of a firearm.

[10] Mr. Mondesir further submitted that the mitigating factors outweighed the aggravating ones and urged the court to impose a term of years on his client which would facilitate his rehabilitation, reform and social readaptation.

[11] Ms. Mensah for the crown submitted the following to be the aggravating and mitigating factors herein:

AGGRAVATING FACTORS

1. the seriousness of the offence of murder – the taking of a life;
2. the defendant has previous convictions for wounding and stealing;
3. the deceased was innocent and had no issues with the defendant as he was not the intended target;
4. the actions of the defendant were pursuant to an agreement to kill for money;
5. the incident was planned and premeditated;
6. the prevalence of the offence in this jurisdiction;
7. a firearm was used in the commission of the offence and this firearm was never recovered.

MITIGATING FACTORS

1. the defendant's plea of guilty;
2. the defendant expressed regret about the incident.

[12] Crown counsel took issue with the submissions of Mr. Mondesir particularly as it related to the mitigating factors. Ms. Mensah contended that the fact that there was delay in the disposal of this matter should not be considered to be a mitigating factor. She further contends that the defendant has pleaded guilty to the offence of murder an offence punishable with life imprisonment and that

he will not be prejudiced by the delay as he will be credited for all time spent on remand. I will refer to this and other matters raised by crown counsel in her written submissions later in this judgment.

- [13] I will now apply the classical principles of sentencing to the facts and circumstances of this case. In the celebrated case of *R v James Henry Sargeant* 1974 60 Cr. App. R. 74. In that decision Lawson LJ stated that '**any judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts of the case to see which of them has the greatest importance in the case with which he is dealing**'

[14] **RETRIBUTION**

The bizarre nature of this case cannot be overemphasized. This defendant along with Doris John took it upon themselves to assess the value of human in the sum of four thousand (\$4000.00) EC. Hence that was considered an adequate sum for the taking of same. The fact that defendant felt compelled by irrelevant and extraneous issues to involve himself in the most heinous criminal act known to man for filthy lucre makes these circumstances even more egregious. However, the fact that the defendant shot and killed another innocent person not being his intended victim makes this offence that much more heinous. Undoubtedly, in these circumstances, the court must show its abhorrence for this kind of offence by imposing an appropriate sentence.

[15] **DETERRENCE**

Deterrence is general as well as specific 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 relapsing into recidivist behaviour.

- [16] The circumstances of this case reveal that the defendant felt compelled by peer pressure to commit this offence as a means of acquiring money to repay his friends. The defendant's

addictions to cannabis and alcohol at the tender age of twelve (12) years old are sources of concern as independently or collectively they would trigger recidivism. The fact that the defendant's associates seem bent on a life of criminal conduct is a more compelling reason for this principle to be taken into account in the sentencing process.

[17] **PREVENTION**

The goal here is to protect society from those who persist in high rates of criminality. For some offenders, the sound of the shutting iron cell door may have a deterrent effect. Some however, never learn lessons from their incarcerations and the only way of curbing their criminality is through protracted sentences whose objective is to keep them away from society. Such sentences are more suitable for repeat offenders.

[18] The defendant is not a first offender having been previously convicted for offences of violence and dishonesty. Moreover, the bleak picture painted of the defendant in the pre-sentence report in the field of discipline and anti-social conduct is to my mind indicative of the likelihood of the defendant re-offending.

[19] **REHABILITATION**

The pre-sentence report reveals that the defendant is remorseful. However, there are several significant hurdles to be overcome by him for his rehabilitation to be successful. The defendant is unskilled with no employment record and low academic achievement. He has been a regular consumer of alcohol and cannabis from childhood. His life of criminal misconduct originated in his youthful days from which he has morphed into a convicted murderer. Though he has not presented any signs of not being responsive to rehabilitation, I find however, that will be a long and arduous process. Hence a suitable term of imprisonment must be imposed to allow for the

defendant's complete rehabilitation and reintegration to the society this time as a law abiding citizen.

[20] I find the following to be the aggravating and mitigating factors herein:

AGGRAVATING FACTORS

1. The loss of a human life;
2. The defendant's agreement to take a human life for money;
3. The offence was planned and premeditated;
4. The defendant's acquisition and use of a firearm;
5. The defendant's previous convictions for violence and dishonesty.

MITIGATING FACTORS

1. Defendant's early guilty plea;
2. The defendant co-operated with the police during the investigation by providing a detailed confession of events;
3. The defendant's remorse.

[21] I have weighed and balanced the aggravating and mitigating factors in light of the facts and circumstances of this case and find that the aggravating factors significantly outweigh the mitigating ones.

[22] **SENTENCE**

A useful starting point in considering the law as it applies to sentencing in cases of murder to consider the applicable legal principles enunciated by Rawlins J.A. [Ag.] (as he then was) in

Mervin Moise and The Queen Criminal Appeal No. 8 of 2003. Though the facts of that case concerned a case of capital murder I find the principles therein to be applicable here.

[23] Sir Hugh opines thus:

It is a mandatory requirement in murder cases for a Judge to take into account the personal and individual circumstances of the convicted person. The Judge must also take into account the nature and gravity of the offence; the character and record of the convicted person; the factors that might have influenced the conduct that caused the murder; the design and execution of the offence, and the possibility of reform and social re-adaptation of the convicted person.... The sentencing Judge is fixed with a very onerous duty to pay due regard to all of these factors.

In summary, the sentencing Judge is required to consider, fully, two fundamental factors. On the one hand, the Judge must consider the facts and circumstances that surround the commission of the offence. On the other hand, the Judge must consider the character and record of the convicted person. The Judge may accord greater importance to the circumstances, which relate to the commission of the offence. However, the relative importance of these two factors may vary according to the overall circumstances of each case. "

[24] The dictum of Rawlins, J.A. was approved by the Board in the decision of **Leslie Pipersburg et anor. V The Queen** P.C. Appeal No. 96 of 2006 from the Court of Appeal of Belize. In that decision Lord Roger of Earlsferry who delivered the decision of the Board added at paragraph 33:

'It is the need to consider the personal and individual circumstances of the convicted person and, in particular, the possibility of his reform and social re-adaptation which makes the social inquiry and psychiatric reports necessary for all such sentencing hearings.'

[25] The probation officer in the pre-sentence report set out the defendant's childhood history more particularly the change in his behavior when he reached adolescence and resided with his father. The defendant's personality change is also reflected in the difference in his performance at secondary school when contrasted with his prior immaculate school record. This is encompassed in the final paragraph of the pre-sentence report to wit:

Based on the information presented in this report it appears that this defendant has been pre-disposed to a number of factors which contributed to his involvement in crime. Potential areas for concern are negative environmental influences, peers, escalating criminal history, no employment record, and low academic achievement. It appears that this defendant has unresolved childhood issues and has had a traumatic past associated with repeated incidents of physical and emotional abuse. It is my view that he will not successfully recover if these underlying concerns are not adequately addressed.

[26] **DELAY**

Both counsel addressed the court in their written submissions as to how the court should approach the matter of delay in this matter. A chronology of events discloses that the defendant was charged with the offence of murder on the 27th April, 2005. It was not until the 19th August, 2008 that his preliminary enquiry commenced at which just three witnesses testified. On that said day the defendant was committed to stand trial in the High Court for the offence of murder. It was not until the 7th November, 2011 that the defendant was first indicted by the Director of Public Prosecutions for the offence of murder contrary to section 86(1) of the Code and thereafter on the 20th July, 2012 for the offence of murder contrary to section 85(a) of the Code to which he entered a guilty plea.

[27] It is common ground that the defendant was held in custody from April, 2005 until August, 2008 when his Preliminary enquiry commenced. Indeed this was not a lengthy exercise since just three witnesses were called and were examined and cross examined that same day. Thus this hearing was neither lengthy nor complicated. It was not until November, 2011 that this defendant was indicted by the Director of Public Prosecutions. Astonishingly, no reason has been proffered by the

crown for the inordinate delay in bringing this matter to a stage of finality at an earlier date. The court has concluded aforesaid that this matter is a short and simple one bereft of evidential and investigatory complications. In *Celine v State of Mauritius* the Privy Council opined thus on the question of delay at paragraph 19:

“This issue has been considered more recently by the Board in *Boolell v The State* [2006] UKPC 46 where reference was made to the decision of the House of Lords in *Attorney General’s Reference (No 2 of 2001)* [2003] UKHL 68, [2004] 2 AC 72 which had held that although through the lapse of time in itself there was a breach of article 6(1) of the European Convention on Human Rights and Fundamental Freedoms, the appropriate remedy would not necessarily be a stay of proceedings but “would depend on all the circumstances of the case”. In light of that decision, delivering the judgment of the Board in *Boolell*, Lord Carswell said at para 32 “Their Lordships accordingly consider that the following propositions should be regarded as correct in the law of Mauritius:

- (i) If a criminal case is not heard and completed within a reasonable time, that will of itself constitute a breach of section 10(1) of the Constitution, whether or not the defendant has been prejudiced by the delay.***
- (ii) An appropriate remedy should be afforded for such breach....”***

[28] On the question of how delay which results in a breach of a defendant's constitutional rights impacts on sentencing the Board opined thus:

It is relevant, however, to refer to the observation of the Board in Boolell at paragraph 39 to the effect that it was not acceptable to put into operation a prison sentence some 15 years after it had been imposed “unless the public interest affirmatively required a custodial sentence, even at this stage”. Although the period of time between sentence and the hearing of the appellant’s appeal is much less (6 years and 4 months), it is still appropriate to consider whether the public interest requires that a custodial sentence be imposed. (emphasis added)

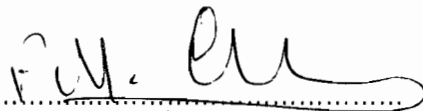
- [29] I find that the inordinate delay is by no means due to deliberate attempts by the defence to delay the progress of this trial. There is no evidence adduced by the crown to explain the reasons for the inordinate delay herein. In the circumstances, I find that the defendant’s constitutional right to a fair hearing within a reasonable time has been breached. However, this is a serious case in which a new dimension of crime to wit murder for hire has been introduced to this region. In the circumstances, the court must impose a custodial sentence. However, by virtue of the inordinate delay this defendant would have in the words of Lord Kerr:

“to confront the prospect of imprisonment when he is much older than he would have been if the trial had been conducted expeditiously.”

- [30] Thus to reflect the court’s finding of a breach in the defendant’s right to a hearing within a reasonable time he will be afforded an appropriate reduction in sentence.

- [31] In **Kenneth Samuel v R** criminal appeal No. 7 of 2005 Barrow JA said that ***'the Court must vindicate its abhorrence for this killing by imposing a deserved rather than an extreme sentence'***. I find this dictum to be quite instructive.
- [32] I have considered the aggravating and mitigating factors herein and the fact that the aggravating factors significantly outweigh the mitigating ones. I have also taken cognizance of the age, personal circumstances and characteristics of the defendant particularly those in his adolescence. I have considered the remorse shown and expressed by the defendant and the assistance and co-operation rendered by him to the police. Indeed the whole case revolves around his confession statement. Though it appears that this offence was the foolish act of a misguided and misled teenager who was unaware of his own immaturity and its consequential limitations, I must consider the overwhelming seriousness of this offence. Human life is priceless. This defendant did the unthinkable when he held himself out on a hired assassin and attached a value of four thousand (\$4000.00) Eastern Caribbean dollars as the price of a human life. Thus, notwithstanding his relatively youthful age the defendant has committed a crime which people must realize will result in a long period of imprisonment.
- [33] The defendant, having pleaded guilty, it follows that the court must impose a fixed rather than indeterminate sentence. The maximum penalty provided for this offence is life imprisonment. In the circumstances I find that a benchmark of forty (40) years imprisonment to be appropriate. I will deduct ten (10) years for the defendant's guilty plea and a further five (5) years the breach of his constitutional right to a speedy trial. I will also deduct three (3) years for his co-operation with the police.

- [34] Accordingly the defendant is sentenced to twenty-two (22) years imprisonment. He will be credited for all time spent on remand whilst awaiting his trial. He will receive counseling for his drug and alcohol addiction and will be enrolled in a relevant academic program at the Bordelais Correctional Facility.


FRANCIS M.CUMBERBATCH
HIGH COURT JUDGE