

THE EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS

IN THE HIGH COURT OF JUSTICE
SAINT CHRISTOPHER CIRCUIT

(Criminal)

SKBHCR2012/0045

DIRECTOR OF PUBLIC PROSECUTIONS

V

[1] JAHMANA WALTERS

[2] ALI PERCIVAL

[3] CLAYTON LAWS

[4] JERMAINE RILEY

Appearances: Ms Rhonda Nisbett-Browne, Dr. Dennis Merchant and Ms Greatess
Gordon for the Director of Public Prosecutions
Convicts in person

2013 February 7

2013 February 19

JUDGMENT ON SENTENCE

[1] **Thomas J. (Ag)** This case involves four (4) prisoners who were all found guilty on two counts of kidnapping contrary to section 62(a) of the **Offences Against the Person Act**, Cap. 4.21.

[2] Upon this event the Court ordered a Social Inquiry Report on all prisoners. The reports were authored by Probation Officers as follows:-

Jahmana Walters – Gerald Connor

Ali Percival – Gerald Connor

Clayton Laws – Trevicia Clarke

Jermaine Riley – Khisma Huggins

- [3] The assessments arrived at by the Probation Officers must now be highlighted.

Jahmana Walters

- [4] The report addresses various aspects of the prisoner's life and the assessment is as follows:

“Jahmana Walters is a young man who comes from a very simple upbringing, raised by his father; not having a solid educational background he still tried his best to be gainfully employed. Unfortunately for him he chose to fall in with the wrong crowd over and over again as was observed by persons who were interviewed.

Jahmana record is not a clean one and it shows a young man who has over the years kept offending the law with some form of violence or a factor which could have contributed to an act of violence. Sad to say it might have been clear that if he did not change his ways he would have eventually reach to this extreme.

A crime such as this in which he was involved is a blatant attack on the upright citizen[s] of our country; a crime of this magnitude cannot be just dealt with just a slap on the wrist, when hardworking citizen[s] are terrorized by thugs whose main purpose is to destroy the lives of others and the moral fabric of our society”.

Ali Percival

- [4] The assessment is as follows:

“It is very sad when people choose to endanger the lives of others for their own personal gain either it for financial or tangible means. Ali Percival has shown clearly that he is a very hostile young man who has no intentions of showing change for the better. Having been convicted for armed robbery in 2005 and now kidnapping, he has shown his true intention of inflicting fear on our society.

From all of the accounts given by individuals, Ali was never thought this kind of lifestyle while growing up, but as stated by his father people change and obviously Ali have change to become an extremely violent individual.

All members of his family expressed their disappointment and shame that he have brought upon them, mostly his father, who said that he is so ashamed that he cannot even let the victims know it was his son who was a part of the terror which was inflicted on their family, and knowing them so personally of being from the same neighbourhood makes it even worst.

This type of behaviour can never go without the full extent of the law being handed out and in this circumstance it should be expected”.

Clayton Laws

[5] The assessment is as follows:

“Clayton has been convicted of an offence that is not of popular status in our Federation; but it is still a serious offence. Kidnapping is a social problem and whatever the motive of kidnappers, the criminality of the act cannot be ignored. It has become prevalent that many persons seek shortcut and illegal routes to be placed in a better financial position. The efficiency of such an act highlights the capabilities of one to use such skills in a positive manner.

Clayton must be commended because all parties interviewed expressed positively that he has always been fully employed. He believed in being independent and self-sufficient. The love for his children should not go unnoticed; the same love with which his father showered him whilst growing up, is the same love he has been expressing towards his children. Some parties expressed their astonishment that Clayton would be involved in such activity because he was known to grow up in the church and not known to be a troublesome person.

He always willing to lend assistance where necessary; sometimes even without payment, just a thank you would be enough for him to make him know that his work was appreciated. This criminal act is contradictory to the hardworking individual that was portrayed by everyone; as if someone falling from grace. Throughout the interview Clayton seemed to be very distant as if reflecting on the choices he had made throughout his life. It is hope that this reflection will lead to redemption”.

Jermaine Riley

[6] The assessment of Mr Riley is as follows:

“Jermaine was not raised lacking the love of family. According to his other, he was loved by his grandparents who offered some stability in his life. The open relationship he had with his family allowed him the freedom to express his feelings and there is no evidence that he was ever disturbed emotionally or had any pressing matters.

Jermaine was brought up amongst elderly persons who tried to impart the knowledge they had learnt throughout their lives to him. Their aim was to ensure that Jermaine made the right decisions in his life that would keep him on the path of a productive and honest citizen. However, Jermaine failed to make the right decision and as such he has been convicted of a very serious crime. This crime has shocked many individuals including friends and family members. Jermaine has failed to live up to the teachings that he was taught and nor he has to bear the consequences of his actions”.

[7] The Court would summarize the assessments by saying that the present cases of the four (4) prisoners who were born in and lived in difficult circumstances and ultimately ended up in crime on a large scale and at the highest level of crime. Their attendance at church did not matter just a desire for money for which they would not have worked. Importantly, however there is nothing in the assessment that gives rise to a mitigating factor.

[8] The next stage in the proceedings is the question of the level of punishment that must be handed out to the prisoners based on their involvement in the crime.

[9] This crime is characterized by the fact that the prosecution relied on the doctrine of common design which speaks to a plan for the crime and each person involved being a participant in the said crime in some form.

[10] The Court must now consider the following:-

1. The nature of the crime – Kidnapping
2. The maximum penalty under the laws is life imprisonment
3. The principles of sentencing – deterrence, prevention, retribution and rehabilitation
4. The manner of execution – After midnight when the female virtual complainant (VC) was in her house as she sat on her couch, VC hands tied up and questioned. The VCs' (mother and father) taken away in one of the VCs' car. One VC detained for a short while in a cane range the second VC was detained in a house, other than her home, at Park Range. The weapons involved were submachine gun, 9 mm pistol, .38 revolver, and a knife.

[11] **Previous convictions:**

Walters – 1997 Wounding - bond in the sum of \$330.00
2000 Carrying abroad an offensive weapon fined \$300.00
forthwith or one month in prison
2002 Armed with an offensive weapon fined \$500.00 or one
month in prison

Percival – 2003 Indecent Assault – Fined \$2000.00 in 3 months or 12
months hard labour
2003 Robbery – 9 years hard labour
2003 Larceny – 2 years hard labour

Laws - 2003 Armed with an offensive weapon – Probation to keep the peace for 6 months

Riley - NONE

Sentencing Guidelines

[12] In **Blackstone's Criminal Practice** at paragraph B2.71 the observations of Lord Lane CJ in **Spence** [1983] 5Cr App. R. 413, 416 are reproduced. This is what he said:

“There is a wide variation between one instance of a crime and another. At the top of the scale of course, come the carefully planned abductions where the victim is held as a hostage on where ransom money is demanded. Such offences will seldom be met with less than eight years imprisonment or thereabouts. Where violence or firearms are used, or there are other exacerbating features such as detention of the victim over a long period of time, then the proper sentence will vary much longer than that. At the other end of the scale, are those offences which – can perhaps scarcely be classed as kidnapping at all. They very often arise as a sequel to family tiffs or lovers disputes, and they seldom require anything more than 12 months imprisonment and sometimes a great deal less”.

[13] Before passing the sentence of the Court, the comment must be made that this is a very serious crime involving four (4) blind men. None of them can differentiate between wisdom or stupidity for it must be alarming that a group of men wanted a bank vault to be opened at 1 a.m. so that they can get one million dollars because of guns, masks, gloves, hats, dark shades, duck tape and threats.

[14] Kidnapping had no place in an island of 50,000 people where visitors are frequent and roam about freely.

[15] Crimes of this nature only serve to put the Federation in a negative light in the eyes of the world because of 4 men without any thought for their country and how it is rated in terms of crime and population size. And because of the internet these events are disseminated in a matter of minutes. They are there forever.

[16] In addition to the variables outlined above which the Court considers the following are critical:

1. Ransom demanded – It was US one million (US\$1,000,000.00) initially and then it came down to one hundred thousand (\$100,000.00).
2. The crime began at about 12:30 a.m. on the 28th October and was ended when the police and soldiers stormed a house late the next day.
3. Both the husband and the wife were kidnapped. Husband for about 10 minutes and wife about 24 hours.
4. This left the very young children unattended and exposed to all kinds of dangers for about five hours.
5. There were three firearms involved: submachine gun, .38 revolver and 9 mm pistol plus a knife.

Sentence

- [17] No mitigating factors arise from the Social Inquiry Reports or otherwise in favour of any of the four (4) prisoners. Not even church attendance.
- [18] As you are aware by now, the maximum penalty is life imprisonment and the relevant principles of sentencing must be deterrence, to deter the same and retribution as society's revenge. All of this falls on the Court.
- [19] Jermaine Riley had no previous convictions but he went to the top of the class and committed a crime that is alien to the Federation.
- [20] The sentence of the Court is that Jahmana Walters, Ali Percival, Clayton Laws and Jermaine Riley will each serve 25 years imprisonment with hard labour on each count. Sentences to run concurrently. Time on remand to be credited towards their sentence.

Errol L Thomas
High Court Judge (Ag)