

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

SAINT LUCIA

CRIMINAL CASE NO. SLUCRD 2009/1101

BETWEEN:

THE QUEEN

Claimant

AND

DAVE SAMUEL

Defendant

Appearances:

**Mr. Jeannot Walters Counsel for the Defendant
Mr. Stephen Brette Crown Counsel for the Crown**

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2012: May 30
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JUDGMENT ON SENTENCING

- [1]. **CUMBERBATCH, J. :** The defendant was indicted by the Director of Public Prosecutions on the 11th June 2010 for the offence of murder contrary to section 85(b) of the Criminal Code. The indictment alleges that between the 17th October 2009 and the 23rd October 2009 the defendant caused the death of Gurney Cooman (the deceased) whilst intending to cause him grievous bodily injury. The defendant was convicted by a jury on the 24th November 2011 of the offence of murder as indicted.

[2] **THE FACTS**

The deceased was a 74 year old retiree who ran a small business commonly called a rum shop at the front of his premises at Augier in the Quarter of Vieux Fort. He sold among other things alcoholic beverages and cigarettes. At around 1.00 a.m. on Saturday 17th October 2009 the defendant broke into the deceased's premises to steal rum, cigarettes and cash to fuel his alcohol and drug addictions. He was disturbed by the deceased who enquired as to the reason for his presence there at that time. A struggle ensued and the defendant cuffed the deceased to the ground. Whilst on the ground and as he was trying to get up, the defendant struck the deceased a blow to his face and neck with a heavy piece of wood to prevent the deceased from restraining him from carrying out his stated intention. Having completed his theft of cigarettes, rum and cash the defendant made good his escape from the deceased's premises.

[3] The commotion caused by the defendant's breakage of the deceased's premises and the ensuing struggle therein alerted neighbors who called the police. An ambulance transported the deceased to the St. Jude's Hospital. On the 23rd October 2009 he died at the Victoria Hospital from intracranial hemorrhage resulting from blunt force trauma to the head.

[4] **THE HEARING**

The court benefitted from a comprehensive pre-sentence report which provided valuable information of the defendant's past conduct and family life. The report alluded to the defendant's drug and alcohol addictions and his infractions with the law both at home and abroad. I will refer to the contents of this report later in this judgment. The court also benefitted from a psychological evaluation of the defendant in which Dr. Swami opined that apart from his drug and alcohol addictions the defendant does not suffer from any mental condition.

[5] At the hearing counsel for the defendant submitted in mitigation that his client suffers from addictions to drugs and alcohol and that he takes full responsibility for what happened that fateful night. He contends that the defendant co-operated with the police throughout their investigations and in a statement in writing spoke of the events that night as they occurred. He has always accepted that his actions caused the death of the deceased.

[6] Mr. Walters contends that the defendant has expressed unreserved remorse for the death of the deceased and has indicated his willingness to change and accept help to rehabilitate himself to facilitate his re-integration to the society.

Crown counsel Mr. Brette submits the following to be the aggravating and mitigating factors herein:

AGGRAVATING FACTORS

1. The seriousness of the offence-loss of life;
2. The offence was committed in furtherance of a burglary;
3. The deceased was unarmed;
4. The type of weapon used – a heavy broad timber plank;
5. Previous convictions of the defendant. The record reflects three previous convictions. The Crown submits that the unspoken message of the first two is that the defendant is contemptuous and averse to discipline for his infractions of the law. Markedly the defendant's third previous conviction is for theft – and a theft at that very rum shop of the deceased;
6. Location and time of the offence – at the deceased dwelling place at or about 1:00 a.m.
7. The extent and location of the injury – blow with a heavy plank to the left side of face and neck area whilst he was lying on the ground after being punched by the defendant;

8. Victim was particularly vulnerable – 74 year old retiree who lived alone.

MITIGATING FACTORS

1. The defendant has expressed remorse
2. The defendant co-operated with the police

[7] Both counsel in their written submissions provided the court with several authorities in support of their individual contentions as to what is an appropriate sentence herein for which the court expresses its gratitude.

THE LAW

A convenient starting point on the law is the consideration of the classical principles of sentencing as set out by Lawton L.J. in the celebrated decision of Regina v Sergeant. These are retribution, deterrence, prevention and rehabilitation. 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**'. These principles were approved and adopted by Sir Dennis Byron C.J. in Desmond Baptiste v Regina. I will now apply these principles to the case at bar.

RETRIBUTION

The defendant is a self-confessed drug and alcohol addict. On the night in question the defendant stated in evidence at his trial that he had smoked cocaine earlier and consumed alcohol. He felt the urge for more cocaine and alcohol and decided to break into the deceased's premises for rum, cigarettes and cash to buy cocaine. At the time of the commission of this offence the defendant was approximately 35 years old whilst the deceased was 74 years old and a pensioner. The

defendant, though significantly younger and stronger than the deceased, found it necessary to hit him over the head with a heavy plank to ensure the success of his acts of theft to provide him with the means to satisfy his addictions. What makes the acts of the defendant more egregious is that he had already cuffed the deceased to the ground at which time the deceased was unable to prevent him from carrying out the theft.

- [10] In the words of Lawton LJ in *R v Sergeant aforesaid*; "society through the courts, must show its abhorrence of particular types of crimes, and the only way the courts can show this is by the sentences they pass."

[11] **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. Drug and alcohol addiction as well as need may trigger high rates of recidivism.

- [12] The pre-sentence report paints a bleak picture of the defendant's past. He worked with his father in Texas on an oil rig and after stealing money from his stepmother's purse he was put out of his father's house. He then stole a vehicle for which he served a period of nine (9) months imprisonment in a Texas prison after which he was deported to St. Lucia. His drug and alcohol abuse continued unabated. He has previous convictions for theft and escaping from lawful custody. The defendant has exhibited all of the characteristics of an offender most likely to re-offend unless he can be weaned off of his addictions by professional help.

[13] **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.

[14] The defendant has not learnt lessons from his prior incarcerations. Indeed he has now extended his criminal activities from theft and drug use to the taking of a human life.

[15] **REHABILITATION**

The Probation Officer notes in the pre-sentence report that the defendant appears willing and motivated to turn his life around and stay away from drugs. The court has also noted his unreserved remorse and that he has from early in the investigations taken full responsibility for his actions. However as the probation officer quite correctly in my view states that apart from the professional help to address his drug and alcohol addictions, the defendant needs to have support systems in place to help him to desist from re-offending and /or returning to the use and abuse of drugs and alcohol.

[16] **AGGRAVATING AND MITIGATING FACTORS**

I have considered the representations made by counsel in their written submissions as to what they consider to be the aggravating and mitigating factors herein. I have also considered same in light of the circumstances of this case. Accordingly I find the following to be the aggravating factors:

AGGRAVATING FACTORS

1. The loss of a human life;
2. The fact that the defendant planned to rob the deceased's shop that night and was prepared to use and did use unnecessary force to accomplish his aims;
3. The age and vulnerability of the deceased as compared to the defendant;
4. The criminal history of the defendant as outlined in the pre-sentence report.

I find the following to be the mitigating factors:

MITIGATING FACTORS

1. The unreserved remorse expressed by the defendant;
2. The defendant co-operated fully with the police from early stages in the investigation.

[17] In the decision of *Mervyn Moise v Regina Rawlins* JA Criminal Appeal No. 8 of 2003 (as he then was) set out the guidelines which a sentencing judge should follow in cases of murder.

Sir Hugh opined 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.....

"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”.

- [18] 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.’

- [19] I have carefully considered the aggravating and mitigating factors herein and have carried out a balancing exercise in light of the circumstances of this case. I have applied the principles and guidelines enunciated by Sir Hugh Rawlings in the case of Mervin Moise aforesaid. In so doing I find that the aggravating factors significantly outweigh the mitigating ones.

[20] **SENTENCE**

This is a case of murder committed with uncalled for brutality. The defendant’s need to feed his addictions can by no means be considered to be an excuse for his brutal attack on the deceased, an unarmed defenceless 74 year old retiree that fateful night.

- [21] The defendant’s drug and alcohol addictions are the sole causes of his checkered past. The pre-sentence report reveals that members of the community in which the defendant resided have stated the defendant changed when he began smoking cocaine. They further state that he was

involved in several altercations when he smoked and drank alcohol. However when sober he was quiet and non-threatening.

- [22] I find the following passage in the pre-sentence report adequately sums up what can be termed the prognosis for the defendant's future.

“The writer notes that the defendant co-operated with the officer in the preparation of the report. He appeared to be willing and seemed motivated to change his life around and to stay away from drugs. However, if the necessary support systems are not in place, this defendant is likely to reoffend if he does not get the rehabilitation that he needs. He would benefit from a psychological and psychiatric intervention programme to address his alcohol and drug addiction. Further counselling is required to address his psychosocial functioning in order for him to be a productive member of society”.

- [23] The court is satisfied that the defendant needs to be incarcerated for a suitable period of time to address his demons. There is no evidence before me to dispute the sincerity of the defendant's stated intentions to turn his life around. I am however concerned about the fact that his parents and siblings all reside in North America hence they cannot be relied on to provide the necessary support mechanism for the defendant on his release to ensure that he does not re-offend.

- [24] The court must however recognise that this case involves the loss of a human life, the most serious offence known to this country. The jury has returned a verdict of guilty of the offence of murder and the court must give effect to their findings. Accordingly the defendant is sentenced to a period of imprisonment of twenty (20) years. He shall be credited for all time spent on remand. He shall receive psychological and psychiatric counselling for his drug and alcohol addictions. He shall also

participate in the necessary programs to enable him to re-integrate and function as a law abiding citizen in the society.



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FRANCIS M.CUMBERBATCH
HIGH COURT JUDGE