

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

SAINT LUCIA

CLAIM NOS. SLUCRD 1590 of 2008

BETWEEN:

THE QUEEN

Complainant

AND

BRAD THOMAS

Defendant

Appearances:

Mr. D. Greene Counsel for the Defendant

Mr. G. James Crown Counsel for the Crown

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2012 : March 13
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JUDGMENT ON SENTENCING

- [1]. **Cumberbatch, J.:** On Monday the 21st July, 2008 the O.E.C.S. Soca Monarch contest was held at the Mindoo Phillip Park, Castries, St. Lucia. Present at that event was the defendant and one McCartney Evanson Monroe ('the deceased') among others. Sometime around midnight the defendant and others were involved in an altercation with the deceased and during that altercation the defendant inflicted a stab wound to the deceased which resulted in his death. There are

conflicting reports as to what started the altercation. The witness Donnella Moncherry who testified during the hearing of a preliminary issue stated that the deceased was alleged to have stolen the chain of one Simon who was a member of the group which included the defendant. The deceased was identified by Simon to be the person who stole his chain and the defendant and his group started beating him. The defendant on the other hand contends that the foot of a female friend of the deceased was accidentally mashed by Cleus, one his friends who was thereafter attacked by the deceased. He further contends that he went in aid of his friend and during the fracas which ensued he inflicted a single stab wound on the deceased with a knife which he had in his possession. The defendant was arrested by the police and whilst in custody viewed a video of the event in the presence of his lawyer and admitted his involvement therein. I shall make further reference to the video later in this judgment.

[2] On the 24th July 2008 Dr. Stephen King performed a post mortem examination on the deceased and found the cause of death to be cardiac tamponade and hemorrhagic shock secondary to a stab wound to the left chest.

[3] The defendant was indicted on the 13th January 2010 for the offence of murder contrary to section 85(b) of the Criminal Code and on the 27th October 2011 the defendant pleaded guilty to the lesser offence of manslaughter.

[4] **THE HEARING**

At the sentencing hearing the court benefitted for a comprehensive pre-sentence report. This report provided the court with valuable information on the formative years and upbringing of the defendant Suffice it to say that the defendant was deprived of the care and comfort of his parents at a tender age and was forced to rely on the goodwill of kind persons and to fend for himself. His brief

encounters with his parents were traumatic as they frequently quarreled or indulged in their preferred brand of illegal narcotic drug in the presence of the defendant and his siblings. Not surprisingly he was left to wander and in so doing kept company with unsavory persons and spent periods of time at the Boys' Training Centre.

- [5] Counsel for the defendant submitted that a bench mark of 15 years imprisonment is appropriate in the circumstances of this case. He urged the court to accept and apply the four classical principles of sentencing, namely retribution, deterrence, prevention and rehabilitation as enunciated by Lawson L.J. in Regina v Sergeant 60 Cr. App. Re. 74-77 which were approved and adopted by Sir Dennis Byron C.J. in Desmond Baptiste v Regina Criminal appeal No. 8 of 2003.
- [6] Mr. Greene went on to submit that the defendant's case does not fall into the category of the worst case of manslaughter by virtue of the fact that the cause of death was as a result of a single stab wound to the left abdomen of the deceased. He further contended that at the time of the commission of the offence the defendant was only 18years old and had lacked the necessary parental guidance which left him at the influence of his peers with devastating consequences. He has no previous convictions and there is no risk of recidivism, hence he should not be kept away from the society.
- [7] Counsel contends that the defendant is a good candidate for rehabilitation and that notwithstanding his unfortunate childhood experiences there is hope that he could become a productive citizen hence he should be the recipient of a sentence which would allow him to appreciate the wrong he has done and allow him to be re-integrated in the society. Counsel submits that the defendant has had the benefit of attending classes in mathematics and English language at the Bordelais Correctional Facility and is now able to read and write. He has also been able to overcome his use

and abuse of narcotic drugs and is expected to refrain from such habits on his release from the Bordelais Correctional Facility.

[8] Mr. Greene has identified the following to be the aggravating and mitigating factors herein;

AGGRAVATING FACTORS

It is submitted that there are only two significant aggravating features surrounding this offence.

Firstly that a weapon was used and that the Defendant was armed with a weapon in public.

MITIGATING FACTORS

The following mitigating factors were identified:

- (i) The Defendant was quite young at the time of the offence and had no criminal history;
- (ii) There was not significant level of violence associated with the killing. That is, there was only one stab wound;
- (iii) The Defendant is remorseful;
- (iv) The Defendant has pleaded guilty although not a timely plea but is still deserving of some credit being attached for same;
- (v) The Defendant cooperated with the police which is evidenced by his statement under caution dated 1st September, 2008;
- (vi) That, on the night of the incident the Defendant was under the influence of alcohol and cannabis.

[9] **THE LAW**

A useful starting point would be to examine the classical principles of sentencing. The classical principles of sentencing namely retribution, deterrence, prevention and rehabilitation were laid down by Lawson LJ 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***'

In ***Desmond Baptiste v Regina*** CJ Sir Dennis Byron embraced and applied these principles. I will now apply these principles to the case at bar.

[10] **RETRIBUTION**

It is common ground that the defendant attended a national event armed with a knife which he used with disastrous consequences. No reason nor excuse was proffered by the defendant as to why the need arose for him to attend an event of entertainment armed with a knife. What is more egregious is that he was obviously prepared to use and did use the knife as a result of which a life is lost. The court has had the opportunity to view a video of the incident on that fateful night and observed the defendant spearheading others in a spirited and concerted attack on the deceased.

[11] **DETERRENCE**

I have viewed with concern the statement in the pre-sentence report that whilst an inmate at the Bordelais Correctional Facility the defendant and others went to another inmate's cell and physically assaulted him. It seems that though the defendant was in a controlled environment he has not eschewed his predilection for violence as a means of settling disputes. In that regard the

inevitable conclusion to be arrived at is that there is some likelihood that the defendant may re-offend when faced with a confrontational situation. The court must of necessity impose a suitable sentence to send an unequivocal message to those who may for whatever reason chose to violate the sanctity of human life.

[12] **PREVENTION**

As stated aforesaid the defendant by his conduct at the Bordelais Correctional Facility has not come to terms with the fact that physical violence is not the accepted way for dispute resolution in a modern day society. The court must determine whether an extended period of incarceration is necessary to ensure that the defendant does not involve himself in acts of violence upon his release into the society with similarly devastating consequences. The court must also consider whether counseling would suffice.

[13] **REHABILITATION**

The defendant has made some progress whilst at the Bordelais Correctional Facility in that he is now able to read and write. I am reminded by counsel that he has been able to overcome his marijuana habit. I must consider however that these improvements have taken place within the confines of a controlled environment. However save and except for the incident of violence at the prison there is no compelling evidence before me that the defendant is not amenable to rehabilitation.

In the circumstances I find the following to be the aggravating and mitigating circumstances of this case: -

[14] **AGGRAVATING FACTORS**

1. The killing of the deceased
2. The defendant's decision to arm himself whilst attending an entertainment event,
3. The spirited and concerted attack led by the defendant against the deceased.

[15] **MITIGATING FACTORS**

1. The hitherto clean criminal record of the defendant notwithstanding his unfortunate childhood
2. The decision by the defendant to plead guilty to the lesser count of manslaughter thereby obviating the need for a trial in the face of overwhelming odds as displayed in the video of the fateful incident
3. The relatively youthful age of the defendant
4. That only a single stab wound was inflicted on the deceased
5. The remorse expressed by the defendant for his conduct that night.

[16] I do not concur with Mr. Greene's submission that the fact that the defendant was under the influence of marijuana and alcohol whilst armed with an offensive weapon at a public entertainment event is a mitigating factor.

[17] I have considered the aggravating and mitigating circumstances aforesaid in the circumstances of this case. The loss of a human life is no trifling matter and the court must at all times have regard to this fact. In the circumstances I find that the aggravating factors outweigh the mitigating ones. Whilst I accept that the sentence must be proportionate to the seriousness of the offence I must also consider the age and peculiar characteristics of the defendant at the critical time.

- [18] The defendant contends that he was provoked to do what he did because of the actions of the deceased towards his friend that night. There are conflicting stories as to what really triggered the attack by the defendant and his companions against the deceased that night and in both versions are an element of provocation. I cannot ignore the fact that the defendant's upbringing bereft of mature and sustained parental guidance pitchforked him from infancy to the rigors of adulthood without going through the requisite period of mentoring and nurturing to enable him to become a model citizen.
- [19] The defendant's unequivocal guilty plea to the lesser count of manslaughter was not done at the first available opportunity. Indeed this was not done until after the court's ruling to admit into evidence the video of the events on the fateful night. As stated aforesaid I attribute his conduct to the difficulties in his upbringing. I do not however consider that to be good reason and excuse for his callous taking of a human life.
- [20] My concerns persist that, as is evidenced by his participation in acts of violence whilst an inmate at the Bordelais Correctional Facility, the defendant is still prone to violent conduct for the settling of disputes. He clearly needs to be subjected to appropriate counseling for a requisite period of time. Experience has shown that there is no quick fix or overnight solution to this problem. The defendant's addiction to marijuana also needs to be simultaneously addressed. I am however encouraged by the remorse shown by the defendant for his actions.
- [21] In the circumstances I find that a benchmark of twelve (12) years imprisonment to be appropriate. I will deduct three (3) years for the defendant's guilty plea. I will also deduct two (2) years for his co-operation with the police aforesaid. I find that a period of imprisonment of seven (7) years to be appropriate. The defendant will be credited for all time served on remand for this offence at the

Bordelais Correctional Facility. The Defendant shall receive counseling for anger management and dispute resolution. He shall also receive counseling for his marijuana addiction.



FRANCIS M. CUMBERBATCH
HIGH COURT JUDGE