

GRENADA

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CRIMINAL)**

CASE NO: GDAHCR0097/2008

BETWEEN:

REGINA

AND

KESTER WILLIAMS

Appearances:

Mr. H. Pinnock for the Crown
Mr. C. Hood for the convicted man.

2010: June 1st

SENTENCE

- [1] **CUMBERBATCH, J.:** The convicted man was indicted for the offence of murder of one Anthony Morain committed on the 20th February 2008 Calivigny St David's. On the 20th day of February 2010 a jury found him guilty of the offence of murder. At his conviction the Crown announced that it would be seeking the death penalty. The Court ordered a social inquiry report be prepared and a psychiatric assessment be conducted. The Court also fixed a date for a sentencing hearing.

FACTS

- [2] The convicted man was an employee of the deceased who ran a tyre shop and garage at Calivigny in St. David's. His employment with the deceased lasted for some 11 years and ended with his death on the 20th February aforesaid. On the day in question the convicted man and deceased had an argument over a damaged hose connected to a gas tank. The deceased stated that he was smelling gas and the convicted man said

he had repaired the damaged hose. An argument ensued and the deceased was stabbed by the convicted man with a knife and later died that same day.

- [3] At his trial the convicted man raised issues of self defence and provocation, both of which were rejected by the jury.

THE HEARING

- [4] At the sentencing hearing the crown quite correctly in the Court's opinion abandoned its application for the death penalty as learned crown counsel conceded that the facts of this case do not reach the threshold laid down by the Privy Council in **Trimmingham v R**, which is that the death penalty should be reserved for the worst of the worst or rarest of the rare cases. The crown instead urged the Court to impose a sentence of life imprisonment or a determinate sentence of such magnitude that it reflects the gravity of the offence. The Crown also urged the Court to accept the following aggravating and mitigating factors.

MITIGATING FACTORS

- “(A) The convicted man has no previous convictions
- (B) The convicted man is not beyond reform

AGGRAVATING FACTORS

- (A) Loss of life of a family man a husband and father of four (4) children
 - (B) Relationship between the parties where the convict was employed by the deceased for 11 years and the relationship was described as a father-son”
 - (C) Manner of the execution of the crime where the deceased who was unarmed was stabbed repeatedly even while helpless on the ground in his own workplace.
 - (D) Multiple injuries inflicted with a deadly weapon.
 - (E) Convict stood inside the garage relatively close to the deceased and did nothing to assist him while he was gasping for breath and bleeding to death.”
- [5] Crown Counsel also submitted that the Court in balancing the aggravating and mitigating factors should attach significance to the opinion of Dr. Swaby the consultant psychiatrist who opined that the convicted man suffers from no psychotic or psychiatric

illnesses. Counsel further submitted that though diminished responsibility is not a defence in this jurisdiction, no evidence was adduced at the trial which disclosed that the judgment of the convicted man may have been impaired by some form of mental disorder. The Crown submitted that the convicted man in a fit of rage followed his employer into his garage and stabbed him repeatedly. Crown Counsel also relied on several authorities in support of his contentions.

[6] Counsel for the convicted man on the other hand submitted that a determinate sentence should be imposed. He contended that the aggravating factors were:

1. The use of a knife and,
2. The number of stab wounds inflicted on the deceased which were 5 in number.

The mitigating factors identified by defence counsel are:

1. The presence of the basis for provocation. This includes the words used by the deceased accusing the convicted man of being irresponsible and displayed a lack of trust in the convicted man who had worked for him for some 10 years, and,
2. The presence of actual provocation. In this regard counsel submits that there were several arguments between the convicted man and the deceased during the course of his employment and none led to a confrontation. He further submits that the evidence of one witness was that the convicted man looked scary, very scary, angry and wild. Counsel also contends that the evidence of a scuffle and the injuries sustained by the convicted man should be considered by the Court as mitigating factors, and,
3. No attempt at concealment. Counsel submits that the convicted man made no attempt to conceal the murder weapon and did not hesitate to surrender same to the police at the scene,
4. There was no plan or premeditation by the convicted man to kill Mr. Morain.

[7] The convicted man has a clean criminal record and the social inquiry report provided the Court with a thorough analysis of his background. What is remarkable is that the

family members of the deceased all speak of a favourable working relationship that existed between the cm and the deceased. There were no major complaints of discord or dispute though at times they disagreed on small issues. The Court was also apprised of the impact of the death of the deceased on his family.

- [8] The convicted man called his aunt as a character witness. She describes him as soft spoken and respectful. She expressed sorrow on behalf of the family to the relatives of the deceased and sought their forgiveness.
- [9] Dr. Swaby also testified and opined under cross examination that she doubted that the convicted man if released would commit another offence of a similar nature. She said the convicted man explained to her that he got angry and killed a man.

THE LAW

- [10] The 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*'
- [11] In **Desmond Baptiste v Regina** CJ Sir Dennis Byron embraced and applied these principles: Sir Dennis stated as follows;

"Retribution

Retribution at first glance tends to reflect to the Old Testament biblical concept of an eye for an eye, which is no tenable in the law. It is rather a reflection of society's intolerance for criminal conduct. Lawton LJ stated at page 77 that:

"... 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."

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. Of what value however are sentence that are grounded in deterrence? Specific deterrence may be an ineffective tool to combat criminal behaviour that is spontaneous or spawned by circumstances such as addictions or necessity. Drug and alcohol addiction as well as need may trigger high rates of recidivism. Experience shows that general

deterrence too is of limited effect. These sentences tend to lose their potency with the passage of time.

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.

Rehabilitation

Here the objective is to engage the prisoner in activities that would assist him with reintegration into society after prison. However the success of this aspect of sentencing is influenced by executive policy. Furthermore, rehabilitation has in the past borne mixed results. Of course sentencing ought not to be influenced by executive policy such as the availability of structured activities to facilitate reform."

[12] I will now apply these principles to the case at bar.

Retribution

The facts of this case disclose that the deceased who was the owner and operator of a tyre shop and garage on the day in question, stated that he was smelling gas and enquired of the convicted man about this. The convicted man contended that he had fixed the damaged hose but the deceased insisted that he wanted to satisfy himself that that was so. An argument ensued during which time the deceased was heard telling the convicted man to stop shouting as he was not speaking loudly. A scuffle followed during which the deceased was stabbed 5 times which resulted in his death. Lawton LJ in **R v Sergeant** aforesaid at page 77 stated that:

'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'

[13] While the Court accepts that the killing of the deceased was not premeditated or planned the Court cannot ignore the willingness of the convicted man to resort to violence over such a simple issue which in this case proved fatal.

Deterrence

[14] The convicted man has a clean criminal record prior to the commission of this offence. I have noted the opinion of Dr. Swaby that he is unlikely to commit an offence of a

similar nature in the future. I have also considered the views of the family members of the deceased who spoke of a favourable relationship between the convicted man and deceased for the 11 years that he worked for him, save and except for a few disagreements on small issues. The Court must however look at the bigger picture and in so doing must impose a sentence to deter others from committing similar offences. Whilst there may not be the need to deter the convicted man from committing another crime of this nature the Court is aware of the increase in the offence of murder over the past 3 years.

Prevention

- [15] The convicted man is a first offender, and from all indications the commission of this offence seems to be out of character where he is concerned. Thus there may be no need to impose a form of punishment on him to prevent him from committing other offences of a similar nature.

Rehabilitation

- [16] The convicted man is certainly in need of an appropriate form of counselling. I have carefully perused the social inquiry report and have not been made aware of any factors which could be identified as militating against his capacity for rehabilitation. I have noted with interest the ambitions expressed by the convicted man that is to rebuild his home, operate his own business and sell used vehicle parts. The probation officer found him to be remorseful, cordial, reserved and informative. Persons in his community have spoken of him in positive terms and he has not been associated with wrongdoing.

Aggravating and mitigating factors

- [17] The Court has to consider and balance the aggravating and mitigating factors. The court finds the aggravating factors to be:
1. The senseless killing of Anthony Morain,
 2. The willingness of the convicted man to use a dangerous weapon to inflict 5 stab wounds in regions of the deceased's body which any reasonable man would expect to have fatal consequences,

3. The callous attitude of the convicted man after stabbing the deceased. He does not seek to render assistance to Anthony Morain, but instead washes the blood from his knife and stands outside of the shop.

[18] I find the following to be mitigating factors:

1. The hitherto clean criminal record of the convicted man
2. The fact that the convicted man co-operated with the police during the investigation
3. The convicted man by all accounts seems genuinely remorseful and is a good candidate for rehabilitation.
4. Though I find that there was no need for the convicted man to be armed with the knife exhibited as the murder weapon whilst on the job, I will consider that to be a misguided act rather than preparatory acts for the offence of murder. I therefore find no evidence that this event was planned or premeditated.

[19] Counsel for the convicted man submitted aforesaid what he describes as the presence of the basis for provocation and the presence of actual provocation. It is trite that the law of this country recognises extreme provocation as a factor which reduces murder to manslaughter. Counsel however submits that though the jury by its verdict was satisfied that the convicted man did not act from extreme provocation, he urges the Court to find that the matters relied on aforesaid could be considered as mitigating factors even though they do not reach the threshold of extreme provocation. No authority was submitted by counsel in support of this contention. The court however for better or for worse gave due consideration to this submission.

[20] The Court finds that the insistence of Mr. Morain to satisfy himself that the gas was not leaking to be no more than an act of caution and a demonstration of a sense of responsibility. One can just imagine the disastrous effects with the likely loss of life, limb and property if leaking gas in a workshop environment remains unchecked and explodes. The Court does not find that this amounted to provocation in any form or fashion, nor is it a mitigating factor.

- [21] The Court finds itself unable to conclude that because the convicted man looked 'scary, angry and wild' and that he was involved in a scuffle with the deceased, that he was provoked. One would hardly expect the deceased being faced with the convicted man armed with a knife in an attacking mode to merely turn the other cheek, rather than to literally fight for his life albeit in vain. The Court rejects the submission that these are factors to be considered in mitigation.
- [22] The Court is required to weigh the aggravating and mitigating factors in light of the classical principles of sentencing as enunciated by Lawton LJ in the case of **R v Sergeant** aforesaid. I find in the circumstances that the aggravating factors to be greater than mitigating factors but I do not find that difference to be significant.
- [23] In **Harry Wilson v Regina** Rawlins JA (as he then was) outlined the manner in which the court should approach sentencing in capital cases. In that decision Rawlins JA stated thus:

"In **Harry Wilson v Regina** Rawlins, JA stated:

"That 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".

Rawlins, JA went on to state:

"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] In applying the aforesaid principles to the case at bar I have examined the circumstances of this case. I find that this was a most senseless killing and it was executed in a most brutal manner. The deceased never had a chance of surviving the surprising and vicious attack by the convicted man on him at his place of business all

because he voiced his concerns about leaking gas in his establishment. I am concerned about the casual and callous manner in which the convicted man after stabbing the deceased left him to die and washed off the blood from his knife.

[25] However I accept that the convicted man has no previous history of violence and acted in a fit of unjustified anger and rage and committed the fateful act which I find was unplanned and unpremeditated. I find from all reports he acted out of character. This was not the first disagreement that he had with the deceased and the evidence discloses that on at least one previous occasion he merely walked away.

[26] The offence of murder is the most heinous one known to mankind. The fact that Parliament has imposed the most extreme penalty, that is the death sentence, which the Court can impose for anyone found guilty of this offence is indeed compelling testimony of its gravity. I find the dictum of Barrow JA in **Alexander Deterville v R** No. 5 of 2003 to be most appropriate here. In that case Barrow JA said:

'though the convicted man's conviction for murder carried with it the proposition that the convicted man intentionally killed the deceased, that intention could have been ascribed to him as a matter of responsibility for a foreseeable consequence rather than a desire for the actual consequence. For that reason the nature of the offence of murder involves a significantly greater degree of moral culpability than manslaughter'.

[27] In another decision that is **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.

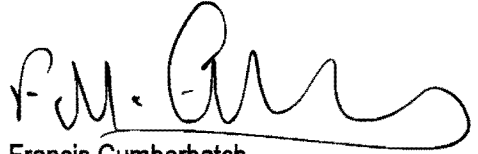
Sentence

[28] I have considered the facts of this case and the circumstances touching and concerning its commission. I have taken into account the aggravating and mitigating factors and considered them in light of the classical principles of sentencing, which are retribution, deterrence, prevention and rehabilitation. I have applied the law as stated in the decisions of the Court of Appeal aforesaid to the circumstances of this case.

[29] I find that there is no evidence before me that the convicted man notwithstanding his commission of such a heinous crime poses such a danger to the society that he should be incarcerated for an indeterminate period of time. Indeed I hold the belief that he is a

prime candidate for rehabilitation and I have no doubt that he would be receptive to appropriate counselling for anger management and dispute resolution.

- [30] The fact remains however that an irreplaceable human life has been lost in a most senseless and brutal fashion. In the circumstances I find that a sentence of 18 years imprisonment would be appropriate. The convicted man will be credited for time served on remand and will receive counselling on anger management.



Francis Cumberbatch
HIGH COURT JUDGE