

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

(CRIMINAL DIVISION)

SAINT LUCIA

CLAIM NO. SLUHCRD 2009/0039

BETWEEN:

THE QUEEN

Complainant

and

YVE HARRISON

Defendant

Appearances:

Mr. David Moyston for the Defendant

Mr. R. Innocent, Deputy Director of Public Prosecutions for the Crown

2010: March 16 and 26

JUDGMENT ON SENTENCING

- [1] BENJAMIN, J: By an Indictment laid by the Director of Public Prosecutions on August 17, 2009, the defendant, Yves Harrison, was charged for the offence of murder contrary to section 85(b) of the Criminal Code of St. Lucia, 2004. The said Indictment alleged that the defendant had caused the death of Dwight Charles intending to cause the said Dwight Charles grievous bodily injury on Saturday, December 23, 2006 along the Vieux-Fort / Laborie Highway in the town of Vieux-Fort. Upon arraignment on September 21, 2009, the Defendant pleaded not guilty.
- [2] The trial commenced on February 15, 2010 with the empanelling of a mixed jury. The Crown opened its case with an address to the Jury and proceeded to lead the evidence of the pathologist and of the family member who identified the body of the deceased to the pathologist. Thereafter, at the request of Defence Counsel on February 16, 2010 the Indictment was re-read to the Defendant who pleaded guilty to manslaughter. The said guilty plea was accepted by the Crown and the case of murder against the defendant was not pursued. The facts relied upon by the Crown in support of the plea were stated to the Court by the learned Deputy Director of Public Prosecutions.
- [3] Pursuant to an Order of the Court, a pre-sentence report was received for the use of the Court. Learned Defence Counsel led the evidence of one character witness on behalf of the defendant and addressed the Court in mitigation of sentence. The defence did not dispute the stated facts which account included the substance of an

interview under caution conducted by the Police investigator with the defendant on January 11, 2007.

BACKGROUND AND FACTS

- [4] On Saturday, December 23, 2006 at about 2:00 p.m., the deceased, Dwight Charles, went to visit a close friend of his mother at King Street in the town of Vieux-Fort. From his 'Auntie', he collected money his mother had sent from the USA. The deceased was then 20 years of age and at the time and he did not appear unwell or under the influence of alcohol.
- [5] The deceased met his girlfriend at the Choissuel bus stand in Vieux-Fort. She noticed the defendant standing ten (10) feet away looking upset. She spoke to her boyfriend who appeared to her to be vexed. She turned and walked away, then she heard screams. She walked back and she saw the deceased trying to stand up and bleeding from his left ear.
- [6] The deceased had also met and spoke with a friend of his, Cletus Leon, at the bus-stand in the presence of the deceased's girlfriend. This witness had finished speaking to the deceased and was walking away from the deceased when he heard someone say 'Pussy' and then screaming. He went back to the bus shelter in time to separate the deceased and the defendant who were in a fight. He saw a scissors in the hand of the defendant and the deceased bleeding from the side of his head.

[7] Yet another eye-witness, Lindon Francis, who is a friend of the defendant, stated that he was walking with the defendant and other friends. The defendant left their company. When he came back, he asked the witness to hold his groceries saying that the deceased had given him two (2) slaps and he was going back as he was not going to take it. Lindon Francis said he saw the defendant walk to the bus-stand where the deceased was standing and a fight ensued. The witness separated them and took the defendant away. The defendant got away from him and fought again with the deceased who was approaching. The deceased was seen to fall to the ground bleeding from his ear.

[8] A bus-driver, Anthony Charlery, was waiting at the bus-stand for his bus to be boarded and saw the defendant and the deceased fighting. The deceased struck the defendant with a stone on his back. He heard the defendant saying while walking around the area that the 'fella' had slapped him and he was not taking it. The defendant rushed towards the deceased and struck him with his closed fist. A fight started and the defendant and the deceased fell to the ground. The defendant stood up and grabbed two stones. At that point, Anthony Charles saw a pair of scissors in the defendant's hand. Subsequently, he saw the deceased attempting to stand up but fell back to the ground with blood coming from the side of his head.

[9] The pathology observed a single stab wound that passed through the upper part of the left ear and through the left temporal area behind the upper left ear. At the surface, the wound was L-shaped and measured 1 cm and 0.8 cm at each limb. The track of the wound was through the temporal bone of the skull (measuring 1 cm at

entry to the bone), through the temporal lobe of the brain, through the lateral ventricle of the brain and extended into the midline of the brain. There was bleeding in the brain and brain damage which resulted in swelling of the left and right hemispheres of the brain. The cause of death was given as brain damage with intracranial bleeding as a result of the single stab wound to the left temporal area of the head. A contributing cause of death was stated to be pneumonia of the right lower lobe of the lung, a condition common in unconscious patients. The pathologist confirmed that the injury could have been caused by an instrument such as a scissors delivered with moderate to severe force.

- [10] Upon being told of the report and cautioned, the defendant told the Police Investigator, Constable Dantes, that the deceased had given him two slaps across the face and he was defending himself. In the subsequent interview under caution, the defendant said that he was at the Choiseul bus-stand when he saw the deceased and others. He admitted to prior enmity with the deceased and his friends. He also stated that he had consumed some drinks while in town shopping, before arriving at the bus-stand just after 3:00 p.m. The defendant said he addressed one Sheldon as 'Pussy' and the deceased got up and started to slap his (the defendant's) face. While moving backwards, the defendant said he saw the deceased pull a small pair of scissors from the region of his waist. He said he felt a hand lash to the side of his head, he fell into a gutter and then he saw the scissors fall. He grabbed the scissors. The deceased came up and tried to slap him but he blocked the slap and punched the deceased to the head with the scissors.

[11] Upon any distillation of the eye-witness accounts and the admissions of the defendant, the deceased slapped the defendant who punched him to the head with a pair of scissors. Although, it was not specifically alluded to by the learned Deputy Director, the plea of manslaughter must have been accepted on the basis of the defendant having been provoked by the slaps of the deceased. Under the provisions of the Criminal Code of St. Lucia 2004, provocation within the meaning of section 91 operates to reduce murder to manslaughter. Such extenuating circumstances, if proved, result in manslaughter which is punishable by a maximum penalty of life imprisonment as prescribed by section 93 of the Code.

[12] In A-G's Reference (Nos. 74, 95 and 118 of 2003) (suratan and others) [2003] 2 Cr. App. R. (s)42, the Court of Appeal of England mandated that in order to ensure that the plea of guilty to manslaughter by reason of provocation is established certain assumptions are required. These are that:

- a) At the time of the killing, the defendant did lose his or her self-control;
- b) The defendant was caused to lose self-control by things said or done by the person whom he has killed;
- c) The offender's loss of self-control was reasonable in all the circumstances;
and
- d) The circumstances were such as to make the loss of self-control sufficiently excusable to reduce the gravity of the offence from murder to manslaughter.

The facts as recounted by the Prosecution, to my mind, adequately support that these assumptions have been cogently met.

SENTENCING

- [13] The sentencing Court must apply all the principles prescribed by statute. In this regard, section 1102(2) of the Code sets out certain judicial guidelines. So far as applicable to the present case, these are that the rehabilitation of the offender is to be treated as one of the aims of sentencing and that the gravity of the punishment must be commensurate with the gravity of the offence.
- [14] Additionally, there must be taken into account as far as applicable the principles set out in the judgment of Lawton, LJ. in R. v. Sargeant 60 Cr. App. R. 74 at p. 77. These classic principles were adopted by Byron, CJ in Desmond Baptiste v. R. – Criminal Appeal No. 8 of 2003 (St. Vincent and the Grenadines). These are the principles of retribution, deterrence, prevention and rehabilitation and are of limited applicability to the defendant.
- [15] In the pre-sentence report, the defendant's mother, sister and material grandmother described him as being well-behaved and a good person. However, his mother expressed disapproval of his consumption of marijuana and his association with individuals she considered to be bad influences. Members of the community including a family member characterized the defendant as a trouble-maker who is prone to heavy consumption of alcohol, smoking cannabis and carrying weapons such as a cutlass and a scissors in public places. Others said he was disrespectful to members of the community and was generally of bad report. In response, the defendant dismissed these reports as false and rooted in jealousy. He did admit to

smoking marijuana periodically and to not greeting the older members of the community.

[16] From the results of the investigations of the Probation Officer, it is fair to say that the Court must consider a sentence that would operate to specifically deter the defendant from future criminal conduct and generally to deter others from criminal behaviour. The defendant's drug and alcohol consumption must play a part in the Court's deliberation.

[17] It is of common notoriety in the community that violence involving knives, cutlasses and other implements is prevalent and a cause for societal concern. Having said so, it must be pointed out that the Crown has not satisfactorily ruled out the defendant's contention that he picked up a scissors which had belonged to the deceased. The Court must resolve this factual dilemma in the defendant's favour and accept his version of the facts on this aspect of the case.

[18] Being faithful to the statutory judicial principles, the objective of rehabilitation must be considered. Of some assistance to the defendant was the testimony of his employer Mr. Simon Gajadhar. As a character witness he spoke of having employed the defendant as a wood craver making marks for two years before the date of the offence. He attested to the skill and good work ethic of the defendant and also to his good relationship with the employer's family and fellow employees. However, Mr. Gajadhar frankly admitted to not knowing whether the helpful and respectful individual in the workplace was the same person outside of the work environment.

Noticeably, the witness made no mention, nor was it inquired of him, whether he knew of the defendant consuming alcohol to excess or smoking cannabis.

[19] The Court of Appeal has approved a benchmark of 15 years for the offence of manslaughter (see: Tench v. The Queen – Cr. App. No. 1 of 1991 (St. Lucia); and Kenneth Samuel v. The Queen – Cr. App. No. 7 of 2005 (St. Vincent and the Grenadines). This upper limit has been followed in numerous high Court decisions on sentencing. At this junction, it is necessary to point out that this case does not fall into the category of the worst of the worst cases of manslaughter.

[20] The sentencing Court is required to conduct a weighing exercise of the mitigating circumstances as against the aggravating factors. The particular facts of the case must be considered to determine the appropriate sentence for the defendant.

[21] The aggravating factors include the use of a weapon, albeit one designed for domestic use, but lethal nevertheless. From the facts, there is evidence that the first fight with the deceased was parted by bystanders but the defendant re-engaged the deceased at which time the fatal blow was delivered. Given the short time between the fights, there would have been no time for the defendant to have regained his self-control. Also, there was a single blow delivered but it was administered with some force enough to puncture the skull of the deceased.

- [22] The defendant has no previous convictions. On the other hand, relatives apart, his reputation in his own community is a bad one to the extent that the time spent by the defendant on remand was welcomed as a respite.
- [23] The defendant had an opportunity to seek an earlier guilty plea and accordingly he would not be entitled to the full discount as if he had pleaded guilty at arraignment. On the other hand, account must be taken of the two years and four months the defendant spent in remand being granted bail.
- [24] By his own admission, the defendant said he consumed alcohol and smoked cannabis. In his account of the fatal incident to the Probation Officer, he stipulated that he had consumed three or four bottles of Guinness before encountering the defendant. His purchase of assorted alcoholic beverages is testament to his excessive alcohol consumption.
- [25] Since the incident the defendant has not run afoul of the law. In prison, he has been a quiet individual. He has also expressed remorse and hopes for a better future.
- [26] The defendant has demonstrated that he is a good candidate for rehabilitation provided that his drug and alcohol habits can be curbed. At the age of 26 years, he can yet be a good citizen.

[27 The offence is a serious one that attracts a custodial penalty. Allowing for appropriate deductions, the defendant is sentenced to eight (8) years imprisonment.

KENNETH BENJAMIN
HIGH COURT JUDGE