

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

(CRIMINAL DIVISION)

SAINT LUCIA

CLAIM NO. SLUHCR 2008/0768

BETWEEN:

THE QUEEN

Complainant

and

SAMUEL WILSON

Defendant

Appearances:

Mr. A. Richelieu for the Defendant

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

2010: March 4 and 17

JUDGMENT ON SENTENCING

- [1] BENJAMIN, J: Upon an indictment laid by the Director of Public Prosecutions on January 6, 2010, the defendant was charged for the offence of non-capital murder contrary to section 85(b) of the Criminal Code of St. Lucia 2004. It was alleged against him that on Sunday April 1, 2008 at 1:00 p.m. at Sunny Acres, intending to cause grievous bodily injury, he caused the death of Michael Daniel. On January 11, 2010 upon being arraigned the defendant pleaded not guilty to murder but guilty to manslaughter. The Crown accepted the plea of the defendant, who is now before the Court to be sentenced.
- [2] The facts as stated by the learned Deputy Director of Public Prosecutions are fairly straight forward. The deceased and the defendant were friends living in the same house with others at Sunny Acres. At about 1:00 p.m. on Sunday, 20th April, 2008, a dispute arose between the deceased and the defendant over a pair of socks belonging to the deceased, which the defendant was alleged to have taken. A quarrel ensued and the exchange escalated. It would appear that although the defendant and the deceased were friends and often wore each other's clothing, it was not unusual for them to quarrel over clothing. However, such quarrels had never gone beyond the exchange of words.
- [3] The quarrel began in the kitchen, continued in the alleyway and eventually the defendant and the deceased came into contact in the living-room. Another occupant of the house intervened by coming between them. The deceased was heard to

threaten the defendant by saying he would take him in his sleep. Another bystander described the deceased as acting very aggressively. The quarrel moved to the balcony then into the dining-room. Whereupon, the defendant left and returned with a cutlass and a knife. He threw the cutlass at the deceased but it did not strike him. The knife was taken away from the defendant. One witness said that the deceased also armed himself with a cutlass but this was taken away from him.

[4] The witnesses differed as to the blows exchanged by the defendant and the deceased after they were disarmed. One witness said that the defendant pushed his chest against the deceased and butted him with his head. Another witness said this was followed up by two cuffs to the deceased's head. Yet another witness said that the deceased responded to the head-butt with two (2) cuffs to the defendant and the defendant in turn cuffed the deceased twice. A fourth witness said that the deceased threw the first three punches. All the witnesses said that the defendant struck the deceased on the right side of his face in the region of either his jaw or his eye and the deceased's head struck the wall forcefully. The deceased then fell backwards and the back of his head was seen to hit the floor.

[5] The deceased lay motionless on the floor. The defendant tried to revive him without success. Subsequently the ambulance came and took away the deceased who was accompanied by the defendant and the female occupant of the house. At the Victoria Hospital, the deceased was admitted with the defendant signing as his next-of-kin.

- [6] The deceased remained under intensive care after surgery until April 23, 2008 when he died. The post mortem examination concluded that the cause of death was brain damage secondary to head trauma and raised intra-cranial pressure and respiratory failure secondary to pneumonia and adult respiratory distress syndrome.
- [7] The defendant is now 29 years old having been 27 years of age at the time of the incident. He is unmarried and the father of three children aged 10, 6 and 3 years respectively. One child resides in the United States of America. The defendant's father died when he was sixteen years of age and while he was living with his paternal grandmother in Barbados. His mother resides at Ciceron, Castries. The defendant has eleven (11) siblings but he does not share a close relationship with any of them.
- [8] The defendant's mother was very young at his birth and so he went to reside with his maternal grandmother until he attained the age of four (4) years. The defendant's father only became aware of his son after his birth and took full responsibility for him to the extent that when the defendant was four (4) years old he was sent to Barbados to live with and to be raised by his paternal grandmother and her Barbadian husband. The defendant went to school in Barbados and was adopted by his maternal grandmother. He maintained a relationship with his father and spent vacations in St. Lucia with his siblings.
- [9] The defendant grew up with his adopted parents as an obedient and loving child in a strict household. He passed the Common Entrance Examination and was admitted

to Secondary School. His achievements at school included his participation in the Youth Parliament, a proud moment for his family. When the defendant's father died when he was aged 16 years, the defendant was adversely affected to the extent that he was unable to write all of his CXC examinations and became unfocused and depressed. He however managed to secure passes in two (2) CXC subjects and two (2) Pitman examinations. He returned to St. Lucia when he was eighteen (18) years of age and took up residence with his mother, never returning to Barbados. After one year he left home and became homeless. He would be seen sleeping around Castries and he admittedly became a vagrant.

[10] The defendant took up the habit of smoking marijuana. He became friendly with the deceased and they remained close friends until the demise of the deceased. The defendant admitted to a life of marijuana use, partying at Gros-Islet on Friday nights and keeping company with a group that broke and entered stores in Castries to fuel their drug dependency.

[11] The defendant lived in various places, including cohabitation with two (2) of the mothers of his children. He engaged in varying forms of employment from time to time. He worked as a porter, a butcher, a clerk/technician, a baker, an entertainer, a security guard and in the construction industry.

[12] While on remand, the defendant has completed programmes in Agriculture, Mathematics and English. He has been preparing to write CXC examinations in English and Mathematics. He also teaches a remedial class of inmates.

- [13] The defendant admitted to three previous convictions. The first was for stealing from the person in 2005 for which offence he was sentenced to three (3) months imprisonment. On August 8, 2008 while on remand, he was convicted on two charges of stealing dating back to 2006 and he was ordered to serve concurrent sentences of six (6) months imprisonment. Learned Counsel for the defendant pointed out to the Court that these convictions are for non-violent offences. With this observation, Learned Counsel coupled the fact that no weapon was used in causing the injuries sustained by the deceased.
- [14] The plea of manslaughter was accepted on the basis of the extenuating circumstances amounting to provocation within the meaning of section 91 of the Criminal Code of St. Lucia, 2004. The penalty as prescribed by section 93 of the Criminal Code is a maximum of life imprisonment.
- [15] The Court of Appeal had endorsed the establishment of a benchmark of 15 years (see: Hilary Patrick Tench v. The Queen – Criminal Appeal No. 1 of 1991 (St. Lucia), Kenneth Samuel v. R., - Criminal Appeal No. 7 of 2005 (St. Vincent and the Grenadines) and Alexander Deterville v. The Queen – Criminal Appeal No. 5 of 2003 (St. Lucia). To this benchmark must be applied any discount for a guilty plea and the weighing of the mitigating circumstances against the aggravating factors. The net result may be an increase over or a decrease under the stated benchmark peculiar to the individual case.

- [16] The Court is charged with ensuring that all principles prescribed by common law and statute are complied with in the sentencing proceedings. In this regard, the Court must observe the general statutory guidelines set out in section 1102 (2) of the Criminal Code as applicable to this case. These include that: the rehabilitation of the offender is one of the Aims of sentencing; and the gravity of the punishment must be commensurate with the gravity of the offence.
- [17] In addition, the Court must take into account the principles adopted by Byron, CJ. in Desmond Baptiste v. R. – Criminal Appeal No. 8 of 2003 as cited from the judgment of Lawton, LJ in R. v. Sargeant 60 Cr. App. R. 74 at p. 77. The learned Chief Justice went on to discuss the classic principles of retribution, deterrence, prevention and rehabilitation.
- [18] In the present case, the question of the specific deterrence of the defendant does not arise on the basis of what was revealed to the Court in the pre-sentence report. The report reveals that there is no likelihood of a re-occurrence of the offence. The manner in which the incident occurred does not suggest that there is any pressing concern to be directed to the public in a general way to promote deterrence. Both learned Counsel and the Probation Officer are ad idem that the main concern relative to the defendant in the present matter is the objective of rehabilitation. Both are agreed that the defendant is a prime candidate for rehabilitation. Having regard to the history of the defendant and his behaviour while on remand, I would concur and posit that, with proper measures being put in place, the defendant can be re-

integrated into society as a productive citizen. However, I am not satisfied that the time is ripe for this to occur immediately.

[19] Learned Counsel highlighted the mitigating factors quite accurately in my view. These were helpfully listed in a written submission and can be summarized as follows;

- (a) The defendant was and continues to be extremely remorseful for the death of his friend who was the godfather of his child;
- (b) The facts clearly demonstrate provocation on the part of the deceased towards the defendant;
- (c) The defendant did not evince an intention to kill, although I would add that there is enough to glean an intention to cause grievous bodily injury as required by section 85 (b) of the Criminal Code;
- (d) The defendant took all steps possible to seek medical attention for the deceased;
- (e) The defendant co-operated with the police and freely admitted his role in the death of the deceased; and
- (f) No weapon was used in the incident.

To these factors must be added to the defendant's early plea at the first opportunity, which entitled him to at least the usual discount.

[20] The defendant has been on remand since his arrest on April 25, 2008 and remained on remand save for the time spent serving the concurrent sentences. For this, the defendant is entitled to a discount.

[21] Learned counsel has brought to the Court's attention a number of cases of sentences for manslaughter, the facts of which all differ in some measure from the present case. In this case no weapon was used. However, the defendant does have previous convictions albeit for offences not of a similar or violent nature.

[22] The defendant ought to be allowed to reflect, develop his educational horizons and prepare himself to re-enter the community. However, in order to do so and commensurate with the seriousness of the offence, a suitable period of imprisonment is required in the circumstances. I do agree that such sentence need not be protracted to achieve the desired result, but the defendant is deserving of more than the short, sharp knocks that he has previously experienced.

[23] In my determination, taking into account all the circumstances of the offence, weighing the mitigating factors as identified with the fact of the defendant's antecedents and applying the requisite discount for a guilty plea, I would sentence the defendant to 5 years imprisonment.

[24] The Court is grateful to learned Counsel and to the Probation Officer for their tremendous assistance.

KENNETH BENJAMIN
HIGH COURT JUDGE