

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

(CRIMINAL DIVISION)

SAINT LUCIA

CLAIM NO. SLUHCR 2009/0008

BETWEEN:

THE QUEEN

Complainant

and

AUGUSTIN WILLIAM

Defendant

Appearances:

Mr. Stanley Felix for the Defendant

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

2010: March 4 and 5

JUDGMENT ON SENTENCING

- [1] BENJAMIN, J: The defendant, Augustin William also known as and called 'Tinatty' was indicted for the offence of manslaughter contrary to section 169(2) of the Criminal Code of St. Lucia, 1992. The defendant pleaded guilty to the offence and is now before the Court to be sentenced.
- [2] The defendant and the deceased both resided in Gadette in the quarter of Dennery. At around 2:00 p.m. on Thursday, June 3, 2004, the defendant was seen beating the deceased who was naked at the time. His feet were also bound with a rope. The beating was administered with a calabash whip, a length of wire and the flat side of a cutlass. The defendant also added in his statement to the Police made under caution that he used a coconut broom. The deceased received several lashes to his head, feet, hands and back and was observed to be bleeding from these parts of his body as he lay on the ground. There is evidence that the beating lasted for approximately twenty (20) minutes.
- [3] The deceased died at the Victoria Hospital on Saturday, June 12, 2004. A post mortem examination was performed by the forensic pathologist, Dr. Stephen King, who stated that in his opinion the cause of death was septic shock with acute respiratory failure and acute renal failure. The doctor observed multiple abrasions spread over most of the surface of the body of the deceased. Some of these abrasions were partially healed and some were infected. It was particularly noted that the injuries to the right leg had caused muscle breakdown; the doctor thus opined that while many of the injuries were superficial and unlikely to cause death, the injuries to the right leg resulted from the use of moderate blunt force trauma.

- [4] In the deposition of Dr. King, he helpfully explained that renal failure results from the inability of the kidneys to cleanse the body of its products from metabolism causing these products to become toxic. Consequently, with a number of areas of the body becoming infected, the infections spread into the blood and the rest of the body. The acute renal failure was surmised to have been possibly caused by multiple blunt trauma which led to muscle breakdown and the product of such breakdown damaged the kidneys. In sum, the multiple abrasions from blunt force contact with the deceased's body started a sequence that caused the death of the deceased.
- [5] The deceased's sister told the Magistrate that her brother had been admitted to the Golden Hope Hospital as a patient on four occasions and that he had been mentally challenged for five years.
- [6] When the defendant was first told he was suspected of murder by causing the death of Ricardo George and cautioned, he at once replied that the deceased had stolen all his new things. Soon after, the defendant gave a statement under caution on June 19, 2004 in the presence of a Justice of Peace. In that statement, he said that the deceased was a cocaine addict who had broken into his house on three occasions, the last occasion being on the day before the beating. He freely admitted to beating the defendant and added that he had beaten the deceased twice before to force him to desist from coming into his yard, breaking into his house and stealing his property, which he listed as including his new Nike sneakers, \$ 800.00 in cash, hats, t-Shirts, gold chains and four (4) pounds of cannabis.

- [7] As to the incident on June 3, 2004, the defendant recounted that he returned home to find his house wide open. He then found the deceased wearing his shirt. With the assistance of one Scotty he tied the deceased's hands and feet with one rope and beat him with wire. He also beat the deceased with a calabash whip and a coconut broom on his back and feet. Persons present asked the defendant to stop beating the deceased but he continued the beating until he saw bruising. The defendant stated that the extent of the beating was prompted by the way the deceased responded to him.
- [8] The deceased was 29 years old at the time of his death. The defendant is now 34 years of age. He admits to being a relative of the deceased whom he knew for a long time from the Gadette area where they both resided.
- [9] The defendant has been on remand since being taken to Court on June 24, 2004. However, during that period he has served concurrent sentences for possession of firearms and possession of cannabis. One each of the two charges for possession of a firearm he was sentenced to seven (7) years imprisonment and for possession of cannabis he was sentenced to six (6) months imprisonment. The sentences were completed on July 24, 2009 and the offences were unrelated to the present matter. The net result is that, the defendant has been on remand for less than eight months.
- [10] The defendant's parents were never in a committed relationship. His father migrated to French Guiana where he subsequently died. For the first eight years of his life except for a few months when he visited his father in French Guiana, the defendant

lived with his mother. She was unable to adequately provide for him so he was informally adopted by Virginia Joseph and went to live with her at Gadette, Dennery. It was with his adopted mother that he lived until he built and move to his own home nearby at the age of 25 years.

[11] The defendant is a farmer by occupation. He began farming when very young assisting his mother and adopted mother who grew and sold ground provisions and garden crops. The defendant often missed school to assist with the gardening and as a result he left primary school in standard 6 at the age of 15 without having written the Common Entrance Examination. Notwithstanding this apparent limited education, the Probation Officer was compelled to comment that he spoke 'proper English'.

[12] In the communities of La Resource and Gadette the defendant is of good report. He was characterized as being 'very cool, respectable and non-violent' by the residents of the communities. He was variously described as a good person who is helpful and hardworking. There is no demur that he has been a mainstay to his mother.

[13] As an inmate of the Bordelais Correctional Facility, the defendant has been a model prisoner and an 'elderly to the other inmates. He presented no disciplinary problems and largely keeps to himself.

[14] Although raised as a Roman Catholic, the defendant embraced the Rastafarian faith. He wore locks and smoked marijuana by his own admission to the probation Officer.

- [15] The Criminal Code prescribes that one of the aims of sentencing must be rehabilitation. It is also enacted that the gravity of the punishment must be proportional to the gravity of the offence committed.
- [16] The starting-point for the punishment for manslaughter has been repeatedly judicially stated to be fifteen years, although all such cases have involved manslaughter due to extenuating circumstances such as provocation: see: Hiliary Patrick Tench v. The Queen - Criminal Appeal No. 1 of 1991 (St. Lucia); The Queen v. Trudy Edward – Criminal Case No. 56 of 2003 (St. Lucia); and Kenneth Samuel v. The Queen – Criminal Appeal No. 7 of 2005 (St. Vincent and the Grenadines). Be that as it may, it holds good in all cases that the maximum sentence must be reserved for the very worst cases and the benchmark can be departed from in appropriate cases.
- [17] The cases of R. v. Trudy Edward and Kenneth Samuel v. R. resulted in sentences of seven (7) years imprisonment on facts based on provocation. These cases offer no assistance in setting an appropriate level of sentencing in cases of homicide founded on the absence of the intent to kill under the repealed Criminal Code of 1992.
- [18] The impact of the offence has been mitigated by the defendant's guilty plea and by his ex post facto remorse. There is also the good reputation of the defendant in the community and his good behaviour while incarcerated. Against these matters, the Court must weigh the aggravating factors which are the defendant's previous convictions and the circumstances surrounding the commission of the offence.

[19] The defendant viciously and deliberately beat the deceased to the extent that his injuries ultimately resulted in his death. So severe was the beating that the deceased suffered kidney failure on account of his body being unable to adequately respond to the damage inflicted. Although urged by by-standers to desist, the defendant persisted in the beating of the deceased who was disabled by his bound hands and feet. Three different instruments – wire, coconut broom and calabash whip - were used in a sustained inflicting of blows over a period of twenty minutes. The defendant's actions amounted to torture of the deceased in retaliation for him having stolen his belongings. The defendant failed to invoke the civil authorities as required by the rule of law but instead chose to embark upon a calculated battery upon the deceased; all because he did not like the way the deceased spoke to him.

[20] The deceased was addicted to cocaine and it can be assumed that in order to feed his habit he resorted to illicit activities including the stealing of the defendant's belongings. It is not so stated but it can be presumed that the deceased's admission to the psychiatric facility at Golden Hope hospital was directly attributable to his drug use. It must have been exasperating to the defendant and other members of the community that the deceased preyed upon their hard-earned possessions. However, although the defendant's actions are thereby rendered understandable, they are not by any means excusable. The resort of citizenry to self-help measures to combat crime must be roundly denounced to discourage vigilante behaviour and lawlessness. Undoubtedly, the deceased family members were at their wit's end, but at the end of the day, the deceased has a right to due process and a right to life, both fundamental entitlements under the Constitution. Equally, any form of torture is specifically abhorred as repugnant to the constitutional mores of the society.

[21] The sentence imposed by the Court must be reflective of the society's stance on such matters and must be pegged at a level to discourage any similar actions by others. The classic principle of retribution was thus encapsulated by Lawton, L.J in R. v. Sargeant 60 Criminal Appeal Report. 74 at page 77: -

“... 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.”

The Courts must show condign disapproval of any activity that eschews the resort to law and order for the adoption of extra-legal measures.

[22] As I see it, the defendant has only attracted the usual remission for a guilty plea. There can be no further reduction as the aggravating factors operated to outweigh the mitigating circumstances attaching to the defendant. In the premises, the defendant is sentenced to 10 years' imprisonment.


KENNETH BENJAMIN
HIGH COURT JUDGE