

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

(CRIMINAL DIVISION)

SAINT LUCIA

CLAIM NO. SLUHCRCR 2008/1335

BETWEEN:

THE QUEEN

Complainant

and

CHRISTOPHER EDWARD

Defendant

Appearances:

Mr. D. Greene for the Defendant

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

2010: March 4

JUDGMENT ON SENTENCING

- [1] BENJAMIN, J: On July 23, 2008, the defendant, Christopher Edward was charged for the offence of murder. After a sufficiency hearing, he was committed to stand trial and was subsequently indicted on September 2, 2009, for the said offence of murder contrary to section 85 (a) of the Criminal Code of St. Lucia, 2004. The defendant pleaded guilty to manslaughter and the plea was accepted by the Crown.
- [2] In aid of sentencing, the Crown ordered and received a helpful pre-sentence report which was taken into account as contemplated by section 1094 (1) of the Criminal Code. The contents of the report were embraced by Learned Counsel for the Defendant and incorporated into his plea in mitigation of sentence.

THE FACTS

- [3] The facts were fully set out by the Learned Deputy Director of Public Prosecutions in a comprehensive statement to the Court which relied on the witness statements and summarized the statement under the caution given by the Defendant to the Police. Defence Counsel adopted the statement under caution as being explanatory of the Defendant's actions.
- [4] On Monday 14th July 2008, the deceased left his home at Rockhall, Castries to attend the Carnival festivities at the Derek Walcott Square in Castries. He was then 17 years of age and lived with his aunt. After 9:00 p.m. that evening, he met a former school-mate with whom he spoke briefly. The deceased was also observed by another female with whom he had worked. The first witness saw the deceased running and

being chased by two persons whom she could only recognise by their clothing. She recalled that the deceased was trying to evade them and subsequently she saw the deceased lying on the ground near a parked Police vehicle. The latter witness observed the deceased who was armed with a short cutlass, in a fight with two or three other persons. She saw the deceased run out of the Square unsteadily and later saw him lying on his back near a Police vehicle. It is noteworthy then when the ambulance came and the deceased was lifted from the ground, a short cutlass was seen under him.

- [5] In his statements to the Police made while under caution in the presence of a Justice of Peace, the defendant stated that he was in the company of friends on the said July 14, 2008 and they consumed two boxes of Grosso wine. He then went to the Square with his friend, Devlin, who pointed out the deceased to him. The defendant said he called out to the deceased who reacted by drawing a cutlass and taking an ice-pick from a vendor's tray. The defendant complained to two Police Officers who referred him to the SSU officers. Devlin then encouraged him to 'roll' on the deceased and the two of them then approached the deceased. The defendant had a screw-driver. Devlin struck the deceased with a bottle and the deceased drew the cutlass and ran towards the defendant. The defendant drew the screw-driver from his pocket. The deceased ran towards him and struck him on the right side of his neck with the cutlass. Thereupon, the defendant swung the screw-driver at the deceased, the screw-driver fell from his hand and he escaped while the deceased was still approaching him with the cutlass. He could not say if the deceased got stabbed at the time.

[6] The Crown's acceptance of the plea was plainly stated to be on the basis of provocation as embodied in section 91 of the Criminal Code. No doubt, some reliance was placed, as evidence of the state of mind of the defendant, upon the prior dealings between the defendant and the deceased as provided by the statement of the defendant to the Police and the statement of the deceased's father. The deceased had sold a ring to the defendant on credit prior to the incident and a disagreement arose as to payment. It resulted in the deceased father's intervention. In addition, of some significance is the fact of the deceased having injured the defendant by digging him in his side some weeks before the day in question. For that injury, the defendant was hospitalized for a few days and at the time of the incident he was still in the recovery mode.

[7] This series of incidents involving the deceased and the defendant serve to suggest either that the defendant targeted the deceased for the purpose of revenge and/or that the defendant was in fear of the deceased. Given the acceptance of provocation, the Court must rule out any compelling force of revenge on the part of the defendant. However, there is enough to make the defendant at least wary of and perhaps in fear of the deceased. That state of mind being subjective to the defendant when coupled with the deceased being armed and approaching the defendant can suffice to constitute the requisite provocation.

[8] The post-mortem examination revealed the cause of death to be haemorrhagic shock secondary to a single stab wound to the left chest.

SENTENCING

- [9] The maximum penalty for manslaughter is prescribed as life imprisonment by section 93 of the Criminal Code. Such sentence represents the upper limit and is reserved for the worst of the worst cases. The Court of Appeal has set a benchmark of 15 years in cases of provocation or other cases of manslaughter attributable to extenuating circumstances. See: Hilary Trench v. R. (Criminal Appeal No. 1 of 1991) (St. Lucia) and Kenneth Samuel v. R. (Criminal Appeal No. 7 of 2005) (St. Vincent and the Grenadines). However, it needs repeating that in an appropriate case the Court can overstep such benchmark.
- [10] The classic principles of sentencing were well set out by Byron, CJ in Desmond Baptiste v. The Queen (Criminal Appeal No. 8 of 2003) (St. Vincent and the Grenadines). These were accurately listed by Defence Counsel as retribution deterrence, prevention and rehabilitation. In addition, section 1102 of the Criminal Code has offered judicial guidelines and sub-section (2), so far as relevant, lists the rehabilitation of the offender as an aim of sentencing; also, the Court is mandated to ensure that the gravity of the punishment must be commensurate with the gravity of the offence.
- [11] With regard to the stated principles, Defence Counsel laid great emphasis on the rehabilitation of the Defendant. Be that as it may, given the history of the interaction between the defendant and the deceased and the defendant's willingness to join with his friend, Devlin, to 'roll' on the deceased, the Court must to some extent concern itself with the arm of deterrence. Of course, the community abhors violence

moreso, such violence that results in death, and retribution, though not in its archaic sense, must enter the Court's contemplation.

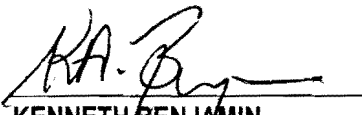
[12] The cases of Trudy Edward v. R. and Kenneth Samuel v. R. (supra) both resulted in sentences of seven years imprisonment. In the former case a single stab around with a knife to the upper chest to a depth of 12cm puncturing the right ventricle of the heart resulted in death after a brief confrontation. The defendant had been on remand for approximately one year when she pleaded guilty to manslaughter. She was found to be pregnant at the time and was a teenager with a clean record. There was also some evidence that the deceased was the aggressor.

[13] In Kenneth Samuel, there was an altercation over a loan of \$10.00 when the deceased struck the defendant with a piece of pipe at the back of his neck. The defendant responded by dealing the deceased three blows with a cutlass. He did so spontaneously. He expressed remorse and was of good character.

[14] In the present case, the defendant has admitted to nine (9) previous convictions for a variety of offences including possession of cannabis, stealing, robbery (which ought to be larceny from the person) and for wounding. He was released from prison on March 31, 2007 for the 'robbery' conviction. Previously dating back to 2001 the defendant had been fined or sentenced to short terms of 4 months and one month imprisonment for stealing.

[15] Since being on remand from July, 2008 he has been a model inmate and has presented no problems to the authorities at Bordelais Correctional Facility.

- [16] The defendant is now 31 years of age. He is single but has two sons aged 8 and 9 years from a previous relationship. Prior to remand, he visited and provided for these children to whom he is attached. His present girlfriend described him as very helpful and loving towards her daughter.
- [17] The defendant's mother was uncharacteristically frank about her son. It would appear that notwithstanding his good upbringing, he chose to keep bad company and indulged in the consumption of alcohol and illicit drugs. He has worked in the construction industry and as a maintenance worker at a hotel.
- [18] The defendant has expressed remorse and has vowed to continue to change for the better. He is sufficiently educated to read well but there is no doubt that he has made poor choices and followed the wrong company.
- [19] In my view, the indicators are clear that the defendant is a good candidate for rehabilitation. He has pleaded guilty and indeed he has asserted this intention since the sufficiency hearing. However, he has persisted in violence as has been evidenced by his prior conviction for wounding.
- [20] Applying the authorities and weighing the stated aggravating circumstances with the mitigating factors, the defendant is sentenced to eight (8) years imprisonment.


KENNETH BENJAMIN
HIGH COURT JUDGE