

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF SAINT CHRISTOPHER AND NEVIS
ST. CHRISTOPHER CIRCUIT
(CRIMINAL)
A.D 2009**

SUIT NO. SKBHCR 2009/0007

BETWEEN:

THE DIRECTOR OF PUBLIC PROSECUTIONS

V

WYCLIFFE LIBURD

Appearances: Mrs Pauline Hendrickson, The Director of Public Prosecutions, and
Ms Rhonda Nisbett- Browne, Crown Counsel
Mr Vincent Warner for Wycliffe Liburd,

**2009: 24th September and
1st and 22nd October**

JUDGMENT ON SENTENCING

- [1] **BELLLE J.** On the 9th day of July 2009 Wycliffe Liburd was convicted of the murder of Charles Matthew otherwise known as "Abaloo" on 18th April 2008 in the area of lower Shaw Avenue Basseterre, St Kitts. On conviction The Director of Public Prosecutions announced that she was seeking the death penalty and Wycliffe Liburd was invited to present evidence in mitigation pending sentencing for the offence of murder. Pursuant to the standard practice in the Eastern Caribbean Supreme Court since the landmark decision in **The Queen v Peter Hughes** Appeal No 91 of 2001 (St. Vincent and the Grenadines) in which it was held that the mandatory death penalty was unconstitutional, a sentencing hearing was held to determine the appropriate sentence in this case.

- [2] Byron CJ as he then was rationalised the decision in the Court of Appeal in **The Queen v Peter Hughes** in the following terms:

"The experience of other domestic jurisdictions, and the international obligations of our states therefore suggest that a court must have the discretion to take into account the individual circumstances of an individual offender and offence in determining whether the death penalty can and should be imposed, if the sentencing is to be considered rational, humane and rendered in accordance with the requirements of due process.

" In order to be exercised in a rational and non-arbitrary manner, the sentencing discretion should be guided by legislative or judicial principles and standards, and should be subject to effective judicial review, all with a view to ensuring that the death penalty is imposed in only the most exceptional and appropriate circumstances. There should be a requirement for individualized sentencing in implementing the death penalty"

- [3] The result of the practice is that in every case of a conviction of murder the convicted person must in accordance with the existing jurisprudence enunciated in **The Queen v Peter Hughes** and later developed in the cases **Harry Wilson v The Queen** Criminal Appeal No.30 of 2004 (St. Lucia) and **Mervyn Moise v The Queen** Criminal Appeal No.8 of 2003 be afforded the opportunity to raise mitigating factors in relation to the circumstances of the murder and surrounding the convicted murderer. It is also now standard practice for the state to provide a Social Enquiry Report and a Psychiatric Report on the status of the convicted man. According to this now established doctrine the convict can lead evidence, which mitigates the nature of the crime that he has committed and may thus affect the gravity of the sentence to be imposed. Among those persons who have been the beneficiaries of the guidelines and practice in St Kitts since 2005 are Keith Herbert, Charles Elroy Laplace , Crispin Prentice, Travis Duporte, Romeo Cannonier, Kemba Swanston, Romeo Cannonier again Lewis Gardner, Ruedeney Williams , Sheldon Isaac , Justin Bass and Lumumba Matthew , William Benjamin and Che Gregory Spencer.

- [4] Counsel for the convict Mr Warner availed himself of the opportunity to mitigate on his client's behalf. Mr Warner led the evidence of Gwenneth Williams, the mother of Wycliffe Liburd. This was the only evidence led on his behalf. But further mitigation was pleaded on Liburd's behalf by way of submissions.

The Circumstances of the Convict

- [5] Wycliffe Liburd's mother Ms. Gweneth Williams said that her son was born on 2nd October 1982. He was going to be 27 on his next birthday. Ms Williams related a woeful story in which Wycliffe Liburd was caught in the middle of an ongoing conflict between his father and her. The conflict took the parties before the court many times and even landed her in prison on a number of occasions. According to Ms Williams Wycliffe's father Paul Liburd was also imprisoned in the course of the conflict.
- [6] Gwenneth Williams was of the view that Wycliffe Liburd's father was a bad influence who took him out to rum shops and other nightspots until the early hours of the morning. She had no control over this because the time spent with his father was ordered by the court and even when it was not Wycliffe preferred to live with his father.
- [7] Wycliffe Liburd was the 5th of the five children born of the union between Paul Liburd and Gweneth Williams. All of the other siblings have done well for themselves but based on the evidence for some reason Wycliffe Liburd preferred bad company and started getting into trouble from a young age.
- [8] Wycliffe Liburd was sent to the Harris Home for Boys when he was 14 years old. But the Harris Home was burnt down soon after and Wycliffe Liburd had to be housed by someone in the family. He elected to stay with his father. Gweneth Williams said after one incident where Wycliffe was implicated in the theft of toys, she found the toys at her home and called the police. But when Wycliffe Liburd's father found out he was upset and told Wycliffe when he stole anything he should steal big. In another incident Wycliffe's mother advised a police officer that he could administer corporal punishment on her son. After the police officer proceeded to inflict such punishment Wycliffe Liburd's father complained to the Commissioner of Police and she had to intervene to save the relevant officer's job.
- [9] This detailed personal story provided some aspect of the background to the man who would later come before the court and be convicted for murder, The fact is that although Wycliffe Liburd knew his parents and visited them there was always conflict between them and inconsistent efforts to provide guidance except from his

grandmother who took him to church along with his siblings. Other than this, there was really no redeeming factor in this upbringing.

- [10] The family story is repeated by the Probation Officer Gerald Connor. Connor describes the relationship between the parents and Wycliffe Liburd as one in which Liburd as the youngest child of the union was being used as a pawn to hurt one parent or the other. In the end they both neglected proper parental supervision in this bitter campaign.
- [11] The probation officer revealed that Wycliffe is the father of a 6-year-old child. He was living with his older brothers at Cedar Grove, St Peters at the time of the murder and remained close to his mother while being somewhat distant from his father.
- [12] At school Wycliffe Liburd was able to gain promotion until he reached fourth form. He also had to change schools because of his tendency to get into trouble. Having transferred from the St Peter's Primary School to the Basseterre High School he was able to attain promotions from 1A3 to 2A3. He committed an offence for which he was sentenced to the Harris Home for Boys. He was subsequently transferred to the Cayon High School where he was promoted to form 3A2. He later was transferred to Sandy Point High School where he was placed in form 4A3, which is considered a demotion.
- [13] Previous criminal records show that Wycliffe Liburd committed and was charged for a number of offences including burglary, housebreaking and larceny, indecent assault, aggravated assault and carrying abroad an offensive weapon.
- [14] Nevertheless family members and neighbours from the St Peters area reported that he was quiet growing up and didn't give much trouble other than would any normal child. Both his brother Hezran and the neighbours blame the company he kept for his present troubles.
- [15] From the Psychiatric Report one would conclude that Wycliffe Liburd is a normal individual. But he felt that society ostracized him. However he said that he was a good person who helps people. According to the Psychiatrist Dr. Halliday, Wycliffe Liburd may have had a desire for change which is persistently overwhelmed by a desire to be accepted by any group even if it meant he was doing wrong. Halliday is of the view

that some of Liburd's negative behaviours may have been a consequence of acting out, poor impulse control, deficits in planning and judgment and poor coping skills. When dealing with his issues there is the use of intellectualisation, repression and suppression.

- [16] But most importantly the psychiatrist found that Wycliffe Liburd did not have any abnormality during the interviews, which would prevent him from being sentenced.
- [17] In considering aggravating factors one need not look beyond the killing of Charles Matthew in broad daylight as a result of Wycliffe Liburd pumping five bullets into his body. Matthew was not armed and was not resisting or fighting with Wycliffe Liburd at the time. There was an argument over money with Matthew protesting that he had no money. Soon after this Wycliffe Liburd fired the first three shots, Matthew ran away injured, Wycliffe Liburd pursued him, held him and shot him two more times. The murder could be described as cold blooded and brutal. These factors must have moved the Director of Public prosecution to seek the death penalty for Wycliffe Liburd.

The Law

- [18] The DPP noted that the first principle that guides a sentencing judge in a murder case is the fact that there is a presumption in favour of an unqualified right to life. She relied on **Harry Wilson v The Queen**, Criminal Appeal No.30 of 2004 (St Lucia) to support that proposition. The second principle is that the death penalty should be imposed in only the most exceptional and extreme cases of murder. She concluded on the law that the death sentence should only be imposed in those exceptional cases where there is no reasonable prospect of reform and the object of punishment would not be achieved by any other means.

Aggravating Factors

- [19] Having reviewed the law in this manner the DPP opined that the circumstances of the commission of the offence should be accorded significant weight. She suggested that the high degree of criminality involved in the case was of serious concern due to its distinguishing features, which are:

- (a) The murder was particularly brutal. The deceased had no chance of survival. The Pathologist's report showed 5 gunshot wounds three of which were associated with injury to the great blood vessels above the heart, which caused the deceased death. Death was the result of gunshot wounds to the chest and abdomen with haemorrhage and shock. Death according to the pathologist would have occurred in less than 5 minutes.
- (b) There is no evidence of provocation or that the prisoner was attacked by the deceased. Charles "Abaloo" Matthew could not satisfy the demands of money made by Wycliffe Liburd. He was killed for that – no provocation and without any warning whatsoever.
- © The murder was executed in broad daylight with contemptuous disregard for passersby or that there may be any witnesses around.

[20] The DPP listed other aggravating factors in the following terms.

- (i) The deceased has a teenage daughter who is at the age when young girls need their fathers in their lives- someone to act as a shield against many pressures placed on them by society and their peers.
- (ii) the deceased's 83-year-old grandmother depended on him. He maintained her in every way possible- cooked, washed, conducted her business and ran her errands.
- (iii) a firearm was used to commit the murder.
- (iv) the murder was committed in broad daylight on a public road without any regard for persons who may be on the street at that time.
- (v) even though the deceased ran from the convict he followed him , held him and shot him again.

Mitigating Circumstances

- (21) However counsel for the convict did not think that the death penalty should be imposed in the circumstances. He argued that given the presumption of the right to life and the fact that the death penalty should only be imposed in the most exceptional cases, this case did not qualify for the death penalty because it had features which had now become common place in St Kitts and Nevis. The circumstances could not be considered the rarest of the rare.

- [22] In the recent Privy Council decision **Daniel Trimmingham v The Queen** Privy Council Appeal No 67 of 2007 Lord Carswell enunciating the same principles with reference to the facts in that case, said,

"Mr Fitzgerald readily accepted that the appellant's crime was a brutal and disgusting murder, involving the cold-blooded killing of an elderly man in the course of a robbery. He contended, however, that it fell short of being in the category of the rarest of the rare. He submitted that the killing did not appear to have been planned or premeditated and although the manner of the killing was gruesome and violent, there was no torture of the deceased, nor prolonged trauma or humiliation of him prior to death.

"Their Lordships accept the correctness of this contention it was undeniably a bad case a very bad case, of murder committed for gain. But in their judgment it falls short of being among the worst of the worst, such as to call for the ultimate capital punishment. The appellant behaved in a revolting fashion, but this case is not comparable with the worst cases of sadistic killings. Their Lordships would also point out that the object of keeping the appellant out of society entirely, which the judge considered necessary, can be achieved without executing him."

- [23] In the **Trimmingham** case the Appellant beheaded the deceased with his own cutlass after pushing him into a ditch. He took off the deceased's pants and wrapped his head in it. He then cut open the deceased's stomach while explaining to one Ding that this would stop the belly from swelling. Before the killing he also asked Ding who witnessed all of this and asked the Appellant to leave the deceased alone, if he Ding wanted him to let the deceased go to lock him (the appellant) up.

- [24] The court's task is not made any easier by this decision. If **Trimmingham's** case is not the worst of the worst neither can Liburd's. The only difference is the issue of premeditation. By premeditation the Privy Council must have meant a previously conceived plan to kill the deceased. In Liburd's case one would have to give the benefit of the doubt in this regard. He first asked for his money and then when the deceased said he did not have any money he fired the first three shots and then followed with the others after pursuing Abaloo who had run away. Both Trimmingham and Liburd would have had time to reconsider their intended action when they formed the intent to kill. Before the killing Trimmingham had planned to rob the victim. Liburd was demanding

money from his victim before he killed him. One would have been no more premeditated than the other. **Trimmingham's** case in every other regard was more revolting than Liburd's

[25] Mr Warner argued that Wycliffe Liburd has shown remorse. But the reports show that Wycliffe Liburd continues to insist that he is not guilty. In a case such as this, such a stance does him little good with the sentencing judge. Nevertheless the state of the jurisprudence relating to sentencing in murder cases is in Wycliffe Liburd's favour as far as the imposition of the death penalty is concerned.

[26] Based in the earlier conclusions I hold that there is no need weigh mitigating and aggravating factors any further. In light of these facts, the state of the law and the doubt with regard to premeditation I think that the most suitable sentence in this case would be one which reflects the seriousness of the crime, and the need to deter similar offences and prevent the prisoner from repeating such behaviour. The sentence should also reflect the community's disgust and the need for retribution for the way in which the crime was committed.

[27] Guided by this recent decision of the Privy Council I have to admit that this murder was not the worst of the worst although cold-blooded, brutal, and brazen in the from of execution. However it is true that this kind of murder has in recent times become commonplace in St Kitts and Nevis. I have accorded great significance to facts surrounding the commission of the crime. I have also concluded that Wycliffe Liburd has to be excluded from society for a very long time. But the law now requires that I do not pronounce the death penalty on Wycliffe Liburd. I therefore sentence Wycliffe Liburd to life imprisonment with a recommendation that he should spend the maximum amount of time in prison before any consideration is given to extending to him the mercy of release unless he earlier demonstrates that he has made significant progress in his character.


FRANCIS H V BELLE
High Court Judge