

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CRIMINAL CASE NO: 2008/0009

BETWEEN

THE QUEEN

Crown

V

JAMAL JONAS

Defendant

Appearances:

Mr. Anthony Armstrong, Director of Public Prosecutions, Mrs. Joanne Walsh Crown Counsel I
and Mr. Kayode Omarde Crown Counsel II for the Crown
Mr. John Fuller and Ms. Nelicia Spencer for the Defendant

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**2008: July 28th
August 4th**
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JUDGMENT ON SENTENCING

- [1] **Blenman J:** Mr. Anthony Armstrong, the Learned Director of Public Prosecutions indicted Mr. Jamal Jonas for the murder of Latricia Hilton. He pleaded not guilty to murder but guilty to manslaughter. On the request of learned Counsel Mr. Fuller, the Court adjourned the sentencing. The Court ordered that the Social Investigation Report be provided.
- [2] He is now before the Court for sentencing.

[3] At the sentencing, I gave excerpts of my judgment. The following represents my full judgment.

[4] Ms. Alethea Byers, Senior Probation Officer, provided a Social Investigation Report. In his mitigation, Mr. Jonas called three witnesses and gave evidence on oath. The facts of the case were presented by the learned Director of Public Prosecutions. I have also paid regard to the evidence of the defendant's witnesses.

[5] **Law**

Section 5 of the Offences Against the Persons Act Cap 300 of Laws of Antigua and Barbuda states the maximum sentence the Court can impose for the offence of manslaughter is 35 years.

[6] **Facts**

Mr. Jamal Jonas is a bus driver and disc jockey by profession. He and Latricia Hilton shared a romantic relationship and together they had a daughter. Their relationship was rocky; they loved each other even though they fought. Mr. Jonas lived with his parents and partially with Latricia. She was upset because she had sent their daughter to visit her mother in Miami and the grandmother was refusing to return her child. Jamal and Latricia quarreled a lot over this. On the night of 24th October 2006, they had an argument at Latricia's home, and as a result, a fight ensued. Latricia, who was known to be aggressive, was getting the better of Jamal. He was screaming for help. Two of the neighbours entered their home and was able to set them apart. Jamal ran out of the house with Latricia in hot pursuit. He ran into a friend's jeep and they drove away. Jamal then sent his friend Theodore to collect his bus. When Theodore was reversing the bus, Latricia ran behind the bus and threw a brick which broke the windscreen. Theodore drove the bus to where Jamal was and gave him the bus. Jamal went home and collected his father's firearm. Hours later the same night, he returned to Latricia's home and shot six times. One of the shots injured Latricia fatally; she had no chance of survival. The following morning, the defendant, in the company of his Pastor and sister, went to the police station where he admitted to having shot Latricia.

[7] Dr. Lester Simon, renowned pathologist who performed the post mortem, stated that the cause of death was a gun shot wound to the right anterior chest. The gun shot wound resulted in the fracture of the ribs, penetrated the lung and heart and caused massive hemorrhaging.

[8] **Plea in Mitigation**

Mr. John Fuller learned Defence Counsel urged the Court to exercise leniency in sentencing the defendant. He quite candidly stated that the Court is obliged to impose a custodial sentence but advocated that the sentence need not be a long one. Mr. Fuller said that Jamal was raised by his mother and father, and subsequently by his father. He has three sisters. Mr. Fuller said that Jamal's mother died seven years ago. Latricia was important to him even though their relationship was stormy and she was aggressive. The defendant is slightly built while the deceased was strong. They had a problem and a fight ensued. When the fight ended, learned Counsel said, Latricia still pursued Jamal. Counsel asked the Court to place heavy weight on the mitigating factors, including the fact that Jamal turned himself in and is remorseful. Learned Counsel Mr. Fuller underscored the fact that Jamal has been on remand since October 2006, he has no previous convictions, and that he has young children who need a father. He said no one wins, everyone loses. He said that Jamal was the victim of abuse at the hands of the deceased.

[9] The learned Director of Public Prosecutions, Mr. Anthony Armstrong implored the Court to pay particular regard to the fact that the legislature in its wisdom has stated that the maximum sentence is 35 years. He referred the Court to the fact that after the fight between Latricia and Jamal ended, he went away, and returned several hours after with his father's gun. Mr. Armstrong said that the defendant had sufficient time to cool. Mr. Armstrong also highlighted that the defendant fired 6 shots, one of which wounded Latricia fatally.

[10] **Social Investigation Report**

In the report, the Probation Officer stated that Jamal has three children, ages 7 to 2 years. He came from a decent family and lived partially with his father (who is a business man). He is the only son. He lost his mother seven years ago. Jamal attended secondary school but he was expelled, having attended the school for 5 years. He later attended the Alpha Institute. He has

a close relationship with his family. The relationship between Jamal and Latricia was rocky, even though he loved her. The deceased was aggressive and confronted him in public. On the night in question, the argument between the two concerned their daughter having gone to the United States of America with Latricia's mother, who was refusing to return the child. Latricia was angry and wanted her daughter returned. During the argument they fought. He was eventually able to get away, after she had beaten him up. He left, went away and returned. It is clear that his parents instilled good values and discipline in the defendant. He enjoyed a good relationship with his father. Jamal played basketball.

[11] Jamal's family were aware of the difficult nature of his relationship with Latricia and the fact that violence was involved. The relationship between the two of them persisted in the face of that. He did not divulge to his relatives the difficulties he was experiencing due to Latricia's frustration at not having their daughter returned. The defendant is a private person and did not tell his family about the physical fights he had with Latricia, even though they were aware of them. It is clear that Jamal's family did not approve of the relationship with the deceased, but he continued saying "he loved her". Some members of the community in which Jamal lives regard him as hardworking, respectable and quiet. They regard him as someone who is timid and weak and endured abuse at the hands of the deceased. Other members of the community stated that the defendant indulges in anti-social behaviour.

[12] The Probation Officer stated that the defendant was the victim of domestic violence over a period of time and reacted in a manner that is out of character.

[13] **Court's consideration**

In determining the appropriate sentence to impose on Jamal, I must take into account the facts of the case; the gravity of the offence; the applicable principles of sentencing; the mitigating and aggravating factors; the applicable law; and the characteristics of the offence. No two cases are alike. While our Court of Appeal has very helpfully set guidelines that should be utilised in sentencing an offender for the offence of manslaughter, the Court recognises that cases vary and the Judge is therefore clothed with the discretion to impose an appropriate sentence, based on the totality of the circumstances. To do otherwise can result in unfairness if

different cases are treated as though they are alike. A recent review of the decisions of our Court of Appeal indicates that for the offence of manslaughter, the bench mark is set at 15 years and it is scaled up or down depending on the circumstances of the cases. Indeed, there are several decisions from our Court in which the Court has imposed sentences of 15 years for the offence of manslaughter. See **Hillary Patrick Tench v The Queen, Criminal Appeal No.1 of 1991** and **James Jn Baptiste v The Queen, Criminal Appeal No.10 of 1994**. This bench mark can be scaled up or down. (In several cases depending on the circumstances, the court has increased the sentence from 15 years).

[14] **Sentencing principles**

The Court, in sentencing the defendant, must apply the well known principles of sentencing as stated in **R v Sergeant 60 Cr App R 74**. Lawton LJ identified the classical principles of sentencing as retribution, deterrence, prevention and rehabilitation. These principles were judicially acknowledged by Byron CJ in **Desmond Baptiste et al v The Queen Criminal Appeal NO.8 of 2003, Saint Vincent and the Grenadines**. His Lordship Byron CJ stated as follows:

Deterrence

“Deterrence is general as well as specific in nature. The former is intended to be a restraint against potential criminal activity by others whereas the latter is a restraint against the particular criminal relapsing into recidivist behaviour. Of what value however are sentences that are grounded in deterrence? Specific deterrence may be an ineffective tool to combat criminal behaviour that is spontaneous or spawned by circumstances such as addictions or necessity. Drug and alcohol addiction as well as need may trigger high rates of recidivism. Experience shows that general deterrence too is of limited effect. These sentences tend to lose their potency with the passage of time.’

Prevention

“The goal here is to protect society from those who persist in high rates of criminality. For some offenders, the sound of the shutting iron cell door may have a different effect. Some however never learn lessons from their incarcerations and the only way

of curbing their criminality is through protracted sentences whose objective is to keep them away from society. Such sentences are more suitable for repeat offenders.”

Rehabilitation

“Here the objective is to engage the prisoner in activities that would assist him in reintegration into society after prison. However the success of this aspect of sentencing is influenced by executive policy. Furthermore, rehabilitation has in the past borne mixed results. Of course sentencing ought not to be influenced by executive policy such as the availability of structured activities to facilitate reform.”

Retribution

The objective here is to reflect society’s intolerance for criminal conduct. The Court, in sentencing an offender, should impose a sentence to show the society’s abhorrence with the criminal conduct of the defendant.

[15] I come now to apply the above mentioned principles to the case at bar.

[16] Retribution

Society, through the Court, must show its abhorrence for gun related crimes; particularly for those crimes in which lives are lost. The Court does this by passing sentences which reflect the society’s intolerance for the seeming upsurge in gun related crimes. Also, the sentence I impose must reflect the seriousness of the offence of which Mr. Jonas is convicted.

[17] Deterrence

I come now to address deterrence. The defendant has no previous conviction, neither is there anything before me on which I can properly conclude that there is any likelihood of recidivism. The sentence does not need to reflect any specific deterrence. There can, however, be no denying that the Court, in sentencing the defendant, must bear in mind the need to deter other potential offenders from committing similar crimes. With the apparent increase in the number of persons who are convicted of committing serious offences, with the use of guns, the Court must send a strong message to society that the Court will deal condignly with persons who use guns to injure others. I am also mindful of the need for the sentence that the Court imposes to be commensurate with the seriousness of the offence.

[18] **Prevention**

Mr. Jonas has no previous convictions and appears to have had no brushes with the law. The Court does not have to prevent him from committing any other offences. This offence seems to be out of character, based on his clean record and the Social Investigation Report.

[19] **Rehabilitation**

The Social Investigation Report indicated that some of the defendant's relatives have urged that the Court enable him to receive counseling. The Court is totally in agreement with this. The Court is particularly concerned with the rocky relationship that the defendant and the deceased enjoyed and the apparent violence that it involved. Of greater concern to the Court is the need to ensure that the defendant is provided with counseling and therapy, particularly since he has taken another person's life. Of note also, is the fact that he was unable to "cool off" several hours after the incident, but instead, found it necessary to go and get a gun and to return and inflict the fatal injury. There is no doubt that the defendant was provoked by the victim. The Court will take this into account in determining the appropriate sentence.

[20] **Social Reform and Adaptation**

Having reviewed the Social Investigation Report and listened to the submissions of Learned Defence Counsel, I have no doubt that the defendant is a good candidate for reform. Mr. Jonas also chose to give evidence on oath and this presented the Court with the invaluable opportunity to hear and assess him. I also note that, even his relatives have indicated their wish that he be provided with counseling. Domestic violence is not to be condoned neither should it be met with violence. There is no doubt that Mr. Jonas was involved in a turbulent relationship with the deceased (in which there appears to have been violence) and it is clear that he is in need of counseling. It is disconcerting that even though he had several hours to regain his composure, he seemed not to have been able to control his anger. As stated earlier, instead, he returned to Latricia's home armed with a gun and shot and killed her. It is my hope that the counseling that he will receive, while in custody, would provide him with the life skills to deal with difficult situations.

[21] In the case at bar, it seems to me that the principles of retribution, general deterrence and the need for rehabilitation are the most relevant.

[22] **Mitigating and Aggravating factors**

The Court must pay attention to the mitigating and aggravating factors. The Court deals more severely where the aggravating factors outweigh the mitigating factors. Through mitigating factors the offender's culpability is enhanced. Aggravating factors include violence of a gratuitous or excessive nature, that is, violence over and beyond the violence necessarily involved in the act itself.

[23] In paying attention to his clean record, I am guided by the words of Byron CJ, as he then said in **Desmond Baptiste v The Queen** ibid stated, "as to the fact that the offender was committing a crime for the first time, it seems to us that the importance of this circumstance should be left to the discretion of the sentencer as a matter that is to be taken into account with all other mitigating circumstances of the offence. It must be stressed though that the more serious the offence, the less relevant will be this circumstance".

[24] The mitigating factors include the following;

- (a) The defendant has no previous convictions and was abused by the victim.
- (b) He has pleaded guilty and turned himself in to the police shortly after the incident.
- (c) He is genuinely remorseful.
- (d) He is a young man who was a disc jockey and a bus driver.

[25] The aggravating factors are as follows:

- (a) The fact that the defendant used a very lethal weapon; a gun, and discharged six rounds.
- (b) The deceased sustained a gun shot wound to the chest.
- (c) The defendant left the scene of the fight and returned several hours after with the gun.

- [26] Mr. Jamal Jonas came from a decent family, therefore it cannot be said that his social background did not prepare him with the coping skills to deal with the conflicts. The Social Investigation Report painted a somewhat favourable view of him even though some members of the community allude to some anti-social behaviour on his part. Having attached the requisite weight to the mitigating factors and the aggravating factors, I am of the view that they just about balance out each other. In sentencing Mr. Jamal Jonas, I also pay particular attention to his culpability in the offence. Of concern to the Court is the fact that he left the scene after the altercation and returned several hours later with the gun. It is also noteworthy that he discharged six rounds from the gun, even though it was only one which injured her fatally.
- [27] It is wrong for a sentencer, in determining the appropriate sentence, to simply impose the maximum sentence on a first offender. To the contrary, the Court in seeking to determine the appropriate sentence must determine a notional sentence and give a reduction for factors that reflect the mitigating circumstances of the case such as the defendants' genuine remorse, his youthfulness and his clean criminal record.
- [28] In determining the appropriate sentence, as stated earlier, I must take into consideration the seriousness of the offence; the nature and gravity of the offence; the need to punish the defendant and to deter other potential offenders. The totality of circumstances in which the offence was committed, also, is a major factor in my determination of the appropriate sentence. I have no doubt that I must pay due regard to the provocation in the matter; the length of "cooling off" time that the defendant had; the extent to which the defendant was at fault in bringing about the situation. I have taken into consideration also, the victim's physical aggression and physical attack on the defendant which occurred several hours before his return to the scene, and fatally shooting her.
- [29] The Court, in its determination of the sentence to impose on Mr. Jonas, finds the pronouncements of **Rawlins JA in Mervyn Mose v The Queen Criminal Appeal No. 8 of 2003, Saint Lucia** extremely helpful. His Lordship stated that;

“In summary, the sentencing Judge is required to consider, fully, two fundamental factors. On the one hand, the facts and circumstances that surround the commission of the offence. On the other hand, the Judge must consider the character and record of the convicted person. The Judge may accord greater importance to the circumstances, which relate to the commission of the offence. However, the relative importance of these two factors may vary according to the overall circumstances of each case”.

[30] In the case at bar, I have no doubt that significant importance should be given to the circumstances in which the defendant committed the offence. Usually, the fact that a defendant has several mitigating factors is accorded substantial weight. Each case must however be decided based on its own facts and the question of the weight to be given to the mitigating factors must be viewed objectively.

[31] I digress to state that, from the Social Investigation Report, it is clear that Mr. Jonas persisted in having the relationship with the deceased contrary to the wishes of his relatives. There is no doubt that the deceased was aggressive both physically and verbally towards Mr. Jonas nothing could justify his taking her life. On the night in question, he had a clear choice not to return to the house; instead he chose to go and get a gun and return to her several hours later and fatally shot her. The Court does not condone domestic violence of any kind; the defendant ought to have had recourse to the law and should not have taken the law into his own hands.

[32] As stated previously, the bench mark that is set by the Court of Appeal can be scaled up and down, depending on the circumstances of the case. In **Case No.4 of 2006 The Queen v Germaine Sebastian, British Virgin Islands**, the defendant, who was indicted for murder, pleaded guilty to manslaughter and was sentenced to the maximum sentence permitted, life in prison.

[33] In **Kamal Liburd and Jamal Liburd v R Criminal Appeals No.9 and 10 of 2003**, the appellants were convicted, by the jury, of murder and manslaughter. The Court sentenced

Kamal to life imprisonment for murder and Jamal was sentence to 30 years for manslaughter. On appeal, both the convictions and sentences were affirmed.

- [34] Also in **Deon Jacobs v The Queen Criminal Appeal No. 5 of 2002 Saint Vincent and the Grenadines**, the appellant was convicted of murder and sentenced to life in prison. On appeal, his conviction of murder was quashed and manslaughter was substituted. The Court also substituted the sentence of life in prison with a sentence of 25 years.
- [35] In **Criminal Appeal No.14 of 1995 Ronald Gederon v The Queen**, the appellant who was convicted of murder had his conviction quashed. The Court of Appeal substituted the conviction of murder for that of manslaughter, and sentenced the appellant to 25 years in prison.
- [36] In **The Queen v Theodore Horsford Criminal Case No.0010/2008 Antigua and Barbuda**, the defendant, who was convicted of manslaughter, was sentenced to 18 years in prison. At the date of sentencing, he had spent nearly two years in prison and had some mitigating factors in his favour. He had used a gun to inflict the fatal injuries.
- [37] Being mindful of the sentencing guidelines and the bench mark of 15 years and taking into account the totality of circumstances, the notional sentence that should be imposed on a defendant is 25 years in prison.
- [38] In my determination of the sentence that is appropriate, I have taken into account the circumstances in which the offence has been committed and all of the mitigating factors including that he has pleaded guilty very early; he has no previous convictions; he is remorseful and the father of three young children; he is a young man; the possibility that he will mend his ways; and he is viewed favourably by his community. I also take into account the actions of the victim. I also pay regard to the fact that Mr. Jonas has been on remand since October 2006. All of these mitigating factors, in my determination, serve to reduce his sentence.

[39] However, the Court cannot overemphasize the seriousness of the offence to which the defendant has pleaded guilty; neither would I downplay the need to prevent or deter other offenders from committing similar offences. (I digress to state that Mr. Jonas is the seventh person, during this assizes, to have been committed for a gun related offence, in which the victim was injured. Gun related crimes are far too prevalent in Antigua and Barbuda).

[40] **The Sentence**

I have taken into account the totality of circumstances, including the degree of provocation in the matter. The Court, though exercising mercy on the defendant, must deal justly in the matter. A life has been lost in circumstances which could have been prevented had Mr. Jonas showed more restraint. I am mindful of his culpability, character and the entire circumstances of the offence. I take into account the mitigating factors, including the fact that Mr. Jonas has been in custody since October 2006, and am of the view that the interests of justice will be served by imposing a sentence of 13 years in prison, to take effect from today's date. That is the order of the Court.

[41] It is my sincere hope that Mr. Jonas uses the time he will spend in prison to obtain counseling and other guidance which will no doubt assist him in re-integrating into the society on his release.

[42] The Court wishes to express its gratitude to both Mr. Anthony Armstrong Learned Director of Public Prosecutions and Learned Defence Counsel Mr. John Fuller for their very lucid submissions.

Louise Esther Blenman
High Court Judge.