

IN THE HIGH COURT OF JUSTICE
IN THE FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT
(CRIMINAL)

SKBHCR2008/0047

THE DIRECTOR OF PUBLIC PROSECUTIONS

V

SHELDON ISAAC
ROMEO CANNONIER
RUEDENEY WILLIAMS
LOUIS GARDENER

Appearances:

Ms. Pauline Hendrickson Director of Public Prosecutions *for the prosecution*
Mr. Reginald James *for Nos 1 and 2 Accused*
Mr. Jason Hamilton *for No 3 Accused*
Mr. Hesketh Benjamin *for No 4 Accused*

2008: 14th – 15th July

JUDGMENT ON SENTENCING

- [1] **REDHEAD J. (AG)** The four accused were charged with the murder of Gavin Gilbert on 21st March 2005. They were tried by a twelve man jury. The jury having deliberated for a period of two hours and twenty five minutes delivered a unanimous verdict of guilty against the four accused men.
- [2] After the verdict was delivered the learned Director of Public Prosecutions announced in open court that she would be seeking the death penalty. A social inquiry report and a psychiatry report in relation to each of the accused men were ordered by the court. The learned Director of Public Prosecutions filed and served submissions to the court.
- Two grounds of the application for the death sentence are-
- (1) The murder of Garvin is an attack on the justice system.
- (2) The murder of Garvin Gilbert was the result of a common design of the convicted persons.
- [3] It is a matter of record that the second named accused, Romeo Cannonier, on 20th July 2004 gunned down a police officer Delvin Nisbett while he, the police officer, was walking to his girlfriend's house at Dieppe Bay. Cannonier was tried and convicted

for the murder of the police officer. In his judgment on the sentencing of Cannonier on 24th January 2008, Belle J. wrote at paragraph 2 “ Cannonier told the deceased witness Gavin Gilbert that he hated policemen and that this particular policeman had beaten him in prison. He insisted in this conversation that he would be killing policemen because he did not like police. The prisoner [Cannonier] had told Gilbert on giving him instructions to hide the gun that he should not get caught with the gun because it was the same gun he used to kill the police.”

- [4] The prosecution’s case is that the second named accused, while he was in custody at Her Majesty’s Prison awaiting his trial for the murder of the policeman met and spoke to one Lionel Warner, who was remanded in the same prison for two months for the non-payment of a child maintenance order.
- [5] Lionel Warner testified on behalf of the prosecution at the trial of the four accused men for the murder of Gavin Gilbert. He said on oath that Cannonier told him that when he got out of prison he must tell Louis Gardener, alias Tulu that he, Louis Gardener, must kill Gavin Gilbert who was to testify against him in his trial for the killing of the policeman. Lionel Warner told the jury that after his release from prison he saw the accused Louis Gardener and gave him Cannonier’s message in the presence of Sheldon Isaac who immediately said that he, Isaac, too would kill Gavin Gilbert.
- [6] As learned counsel for prosecution, Sir Richard Cheltenham Q.C. said Sheldon Isaac was present when the message “of death” from Romeo Cannonier was delivered to Louis Gardener. Isaac immediately bought into the plan.
- [7] Miss Kimia Evelyn, the girlfriend of Ruedeney Williams testified on behalf of the prosecution. She said that on the afternoon of 21st March, 2005 her boyfriend picked her up from work. On their way home Ruedeney Williams received a call from Hatcher, Sheldon Isaac, whose voice she recognised. Ruedeney told him that he could not pick him up because his girl friend was in his car.
- [8] Kimia Evelyn said that when she and her boyfriend, Ruedeney Williams, got home, Ruedeney Williams made a call and said “we reached.” She said Ruedeney was cleaning his gun. He was wearing black gloves. About 6:00 p.m. Sheldon Isaac and Louis Gardener arrived at their home; both of them were dressed in black. She told the jury that Tulu, Louis Gardener, was wearing dark shirt, dark pants and black shoes. Hatcher, Sheldon Isaac, was wearing a black thick hoodie black jeans and black sneakers.
- [9] Ruedeney Williams went outside of the house to meet them, before going out, Ruedeney Williams told her that she should not touch the gun because he did not want her finger prints on the gun. She told the Court that Ruedeney Williams spoke to the two accused, Sheldon Isaac and Louis Gardener. They both got into his car and he drove them away.
- [10] Kimia Evelyn testified that Ruedeney Williams returned about fifteen minutes later. He told her that the men had gone about their business. The irresistible inference to be drawn from this testimony is that Ruedeney Williams had driven the two accused Isaac and Gardener to wait in ambush for Garvin Gilbert in order to execute their murderous plan.

- [11] There is not a scintilla of doubt in my mind that these four accused men put their heads together to plan and execute this vicious murder of the deceased for the sole purpose of silencing him so that he would not be able to testify against the second named accused Romeo Cannonier who had previously brutally murdered a police officer because of his hatred of the police and because as he claimed that the officer beat him while he was in prison.
- [12] I am fortified in my view having regard to what Louis Gardener himself told Donell Stephens. Donnell Stephens testified that Louis Gardener told him that they had killed Garvin to free Romeo.
- [13] This to my mind scoffs at and mocks our justice system, which I regard as sacrosanct because if our system of justice is compromised that would spell disaster to civilized society. In this regard I point to the obvious fear of some of the witnesses who testified at this trial. I have no doubt in my mind that some of these witnesses were mortally afraid to testify against the accused persons. Donell Stephens fainted and collapsed on two separate occasions while he was giving his testimony. Kimia Evelyn when she was called to testify seized up and was unable to speak. On the second occasion when she was again called she began her testimony well but halfway through was gasping for breath. When she was again called to resume her testimony she did so by shielding, with her hand, her view from the accused. I have no doubt that all of this was because of fear. Some of the jurors expressed concerns for their safety to me. In my twenty three years as a judge, I have never experienced a trial with so much drama and tension as this one.
- [14] In these trying and difficult times when a society is gripped by violence and intimidation to the extent that the basic fabric of civilized society is challenged by those perpetrators of violence, the Court must be the sentinel on the qui vive. If the Court fails to adopt that role, then I fear that the criminals would commit the most heinous crimes with impunity.
- [15] In addition to what I have said this to my mind, is more alarming when the genesis of the plan to kill the potential witness originated from within the supposed secured walls of Her Majesty's Prison and the author of which was an accused who was awaiting trial for the brutal slaying of a police officer
- [16] Another alarming aspect of this case, to my mind, is that deceased was dropped off close to his home after a friend had taken him to St . Pauls to collect KFC. Soon after the gun shots were heard people were on the scene. The deceased was seen lying on the ground without his trousers. Dogs were seen having his dinner, the KFC. The deceased trousers were later found close, to the beach, in the direction which his assailants had run .The obvious inference is that the assailants had partially undressed the deceased after executing him. This to my mind was an attempt to humiliate the dead, his sin being a potential witness in the slaying of a police officer
- [17] In this regard I agree entirely with the learned Director of Public Prosecutions who in her written submissions argued that the Court must ensure that the nature and commission of this kind of offence is one which must be deterred to ensure that it does not take place in our small society to which the Court owes a duty. It was brought out in evidence that Romeo Cannonier gave a similar message to Lionel Warner to tell one "Hotboy" that he too should kill Garvin Gilbert.

- [18] I accept that if the “offence as well as if the offender is of an exceptionally depraved and heinous character and constitutes on account of its design and the manner of its execution a source of grave danger to society at large, the Court may impose the death penalty.”(Per Saunders JA (Ag) in *Newton Spence and Peter Hughes v The Queen* (Criminal Appeal No 20 of 1998.} I would, however, with respect substitute, or for and in the above quote so that it would read exceptionally depraved or heinous character. I, would, however, say that notwithstanding this proposed substitution that the present case is on all fours with the above principle.
- [19] Mr. James, learned counsel, for nos. 1 and 2 accused poured scorn on the grounds filed by the DPP. He argued that the court should not impose the death sentence on these grounds .I make the comment that this is not a situation where one is bound by his pleadings.
- [20] Mr. James referred to and relied on *Moise v The Queen* P.C. 15 July 2005 Mr. Hamilton and Mr. Benjamin also relied on this authority .At paragraph 33 of *Leslie Pipersburgh and Patrick Robateau v The Queen* (Privy Council Appeal) Lord Rodger of Earlsferry cited with approval the judgment of Rawlins JA (Ag) as he then was in *MOISE* at paragraphs , 17 18, and 19 he wrote-
- [21] “The cases mentioned in the foregoing paragraph establish that the first principle by which a sentencing judge is to be guided in these cases is that there is a presumption in favour of an unqualified right to life. The second consideration is that the death penalty should be imposed only in the most exceptional and extreme cases of murder. At the hearing, the convicted person must raise mitigating factors by adducing evidence, unless the mitigating facts are obvious from the evidence given at the trial .The burden to rebut the presumption then shifts to the Crown. The Crown must negative the presence of mitigating circumstances beyond a reasonable doubt. The duty of the sentencing Judge is to weigh the mitigating and aggravating circumstances that might be present, in order to determine whether to impose a sentence of death or some lesser sentence.
- (18) It is mandatory requirement in murder cases for a judge to take into account the personal and individual circumstances of the convicted person. The judge must also take into account the nature and gravity of the offence; the character and record of the convicted person; the factors that might have influenced the conduct that caused the murder; the design and execution of the offence, and the possibility of reform and social re-adaptation of the convicted person.
- 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. The sentencing judge is fixed with a very onerous duty to pay due regard to all of these factors.
- (19) In summary, the sentencing judge is required to consider fully, two fundamental factors. On the one hand, the judge must consider the facts and the 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.”

- [22] Indeed, I shall award more importance to the circumstance surrounding the commission of this offence. It was done in cold blood .Garvin Gilbert was murdered to prevent him from giving evidence against Romeo Cannonier, to free him after he had committed a vicious murder of a police officer.
- [23] I must say that no mitigating factors were raised at the sentence hearing by adducing evidence in relation to any of the accused and in my considered view none was obvious from the evidence given at the trial. In my judgment, therefore, no burden then shifts to the Crown on this aspect of this case.
- [24] I now analyze the character of the individual accused.
- (1) Sheldon Isaac is 29 years old. He has two previous convictions for violent crimes, robbery with a firearm and wounding.
 - (2) Romeo Cannonier is 32 years old was convicted of murdering Delvin Nisbett and was sentenced to be hanged.
 - (3) Ruedeney Williams is 31 years old was convicted for wounding.
 - (4) Louis Gardener is 30 years old. He has no previous conviction. The social inquiry report speaks to his being quiet when he was growing up, but as the years passed he became a very shady character and displayed deviant behavior from time to time. Behavior such as gang fights.
- [25] Learned Counsel ,Mr. Benjamin for the accused, Louis Gardener referred to the social inquiry report which quoted Miss Suzan Kelly once supervisor of this accused as being a very good worker. He was very quiet and always had a smile. Learned counsel also referred to the report which speaks to teachers who once taught him as very quiet, but the company he kept was a bunch of rowdy persons, who was always in trouble with the police
- [26] Learned counsel for Ruedeney Williams, referred to the social inquiry report in which it was there stated that his mother stated that Ruedeney was “never rude to me.” He and my husband get along very well Denny used to be the one who used to be at home with his younger brother when “I go out with my husband at nights.” Learned counsel drew attention to this to argue that this was a caring person and could not be said to be incapable of reform. He also referred to the report in which Mr. Romel Mathew the step father of Ruedeney Williams said “Denny And I get on well, I never had any confrontation with him he never rude to me, I used to speak to him not to get into anything, but you can only speak to him and try to remind him not to get into anything, but you can do so much.. I was surprised when I found out that his name was being called in these whole things because he never shows that he was a violent person, but we don.’t know when a guy will just decide to make a wrong choice.
- [27] Mr. Hamilton also drew attention to the teachers’ report which said that Ruedeney showed little interest in getting a solid academic education, but one who has the capacity to do anything if he puts his mind and energy into it. He has the ability once he is in the correct environment to be one who is capable of anything. Mr. Hamilton argued that this cannot be a person who is incapable of reform.

- [28] The learned Director of Public Prosecutions drew attention to the probation officer's report in his assessment of Sheldon Isaac. He said at the time of the incident, the accused had the capacity to inflict harm upon someone, based upon his conviction in the magistrate court for the offence of wounding in 1999 and was incarcerated for six months with hard labour; and again in 2001 for the offence of robbery with a firearm and was sentenced to five years.
- [29] The probation officer when he interviewed Sheldon Isaac's mother, this is what she had to say 'upon his release from prison in 2005, his family offered him a chance to start a new life, one which he accepted but was later drawn into the wrong crowd.
- [30] The probation officer concluded by making the observation that Sheldon's mother and father have both chastised him on many occasions for his wrong doing but confirming to the laws of the land and being a law abiding citizen of this or any country has always seemed farfetched.
- [31] In my considered opinion in light of the social inquiry reports, I am firmly of the view that there is no reasonable prospect of reform of these four accused men. I take into consideration that Romeo Cannonier who I regard, in light of the evidence, as a very dangerous and violent individual was very confident to place in the reliable hands of Louis Gardener the execution of Gavin Gilbert.
- [32] Dr. Sharon Halliday produced psychiatric reports in relation to the four accused. In the opinion of Dr. Halliday, Louis Gardener did not have a previous psychiatric history. On her examination of him he had a normal mental status. He appeared to have good reasoning and deductive skills.
- [33] In the doctor's opinion, Romeo Cannonier has no previous psychiatric history but has a forensic history of over 15 years. He had a normal mental status examination on the days when he was interviewed. The doctor opined that he did not have any thought disorder. He had no disorder of thought control.
- [34] In the opinion of the psychiatrist, Sheldon Isaac had no disorders of thought control. He did not appear to have a normal mental state. He lacked insight into his current mental state. It must be remembered that this accused received a gunshot injury to his head after the murder of Gavin Gilbert.
- [35] In the opinion of Dr. Halliday, Ruedeney Williams did not appear to have an abnormal state when she examined him. He was not noted to have any thought disorder. He had no perpetual disturbances. His cognitive processes appeared to be generally intact.
- [36] The social inquiry report regarding Romeo Cannonier speaks to a possible change in Cannonier's attitude after he witnessed the hanging death of his father, he became distant.
- [37] From the social inquiry report it is quite clear to me that none of the accused, except Louis Gardener, showed any remorse for their dastardly act. I must, however, point out that Louis Gardener appears to have had a change of attitude at the time of his interview with the probation officer. Because shortly after the murder he was boasting to Donnell Stephens how the murder was committed and the individual part played by each of the three accused Romeo Cannonier e.g. when asked for an explanation

for the commission of the offence replied “ I have no comment me aint got nothing to say”.

- [38] I entertain no doubt that the collective conscience of the St. Kitts/Nevis community is shocked by this outrage, particularly in light of the fact that it was an obvious attack upon the justice system. In this regard I view this as an exceptional case. I, therefore have no alternative but to impose the death penalty on each of the accused men. As I can see no justifiable reason why they should not face the ultimate penalty. {see *State of Rajasthan v Karaj Ram* [2003] 3 LRI 692 the Supreme Court of India (Criminal Appeal Division at paragraph 39.)
- [39] Sheldon Isaac, Romeo Cannonier , Ruedeney Williams, and Louis Gardener you are sentenced to death by hanging for the murder of Garvin Gilbert on 21st day of March 2005, for which you were convicted by a jury on the 12th day of June 2008.

ALBERT REDHEAD
High Court Judge (ag)