

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CRIMINAL)

CRIMINAL CASE NO: 2007/0016

BETWEEN

THE QUEEN

Crown

V

QUEISHA GEIGER

Defendant

Appearances: Mr. Anthony Armstrong, Director of Public Prosecutions for the Crown
Mr. Steadroy Benjamin for the Defendant

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2008: July 9
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JUDGMENT ON SENTENCING

- [1] **Blenman, J:** Ms. Queisha Geiger was indicted by the learned Director of Public Prosecutions for the offence of murder. She pleaded guilty to the lesser count of manslaughter, after the Crown had adduced evidence through three of its twenty one witnesses. She is now before the Court for sentencing.
- [2] The facts of the case were presented by the Learned Director of Public Prosecutions, Mr. Anthony Armstrong. In addition, I have paid regard to the evidence adduced by the Crown, through its witnesses. Learned Defence Counsel, Mr. Steadroy Benjamin asked the Court to pay regard to the witness statements contained in the depositions. Bases on the request of defence counsel, the Court ordered the production of a Social Investigation Report. Ms.

Alethea Byers, Senior Probation Officer tendered the report. She also gave evidence, on oath.

[3] **Facts**

Originally, Queisha Geiger and Kerri-Anne Lewis were friends. They both attended the All Saints Secondary School. Kerri-Anne was 15 years old and so too was Queisha, at the time of the incident. The girls were not getting along well after a while, and Queisha was teased repeatedly by Kerri-Anne and her friends. So, Queisha took a knife to school and during the course of the day, she and one of Kerri-Anne's friends exchanged words while they were in a cooking class. On the adjournment of school for the day, Queisha was heading home in the company of a friend. The deceased, Kerri-Anne teased Queisha, who responded that today was her day and that Kerri-Anne should do what she wanted and that she (Queisha) would do what she had to do.

[4] At that time, together with a friend Alicia Robertson, Kerri-Anne was in front and Queisha was behind. Queisha was about to pass Kerri-Anne when she pushed her friend Alicia onto Queisha, whereupon, Queisha went to Kerri-Anne. An argument ensued between the girls and they wrestled, whereupon Queisha took out a knife from her uniform, held it in her hand, pushing it in Kerri-Anne's face. Kerri-Anne took away the knife from Queisha but Queisha was finally able to retrieve it and she tried to stab Kerri-Anne. Alicia was able to push Kerri-Anne out of the way. However, the fracas did not end since Kerri-Anne pushed her friend Alicia, who was in front of Queisha, out of the way, and approached Queisha and the fight continued. Queisha and Kerri-Anne were wrestling when Queisha stabbed Kerri-Anne in the left side of her breast. Kerri-Anne did not realize the gravity of the injury she had received so she got a bottle and armed with the bottle; she approached Queisha and hit her in the head.

[5] Kerri-Anne eventually succumbed to the stab injury and was pronounced dead. Dr. Leslie Simon, renowned pathologist who performed the post mortem, stated in the autopsy report that the wound which fatally injured Kerri-Anne, punctured her lung and the heart. She died from hemorrhage to the lung and the heart.

[6] **Law**

Section 5 of the Offences Against the Persons Act Cap 300 Laws of Antigua and Barbuda, states that the maximum penalty for manslaughter is 35 years.

[7] **Plea in mitigation**

Mr. Steadroy Benjamin learned Defence Counsel, in a very impassioned plea asked the Court to show Queisha some mercy and pay particular regard to the fact that Queisha never had any scrapes with the law, that she pleaded guilty and did not waste the Court's resources, she is very remorseful and apologises to Kerri-Anne's family for their loss. He referred the Court to the Social Investigation Report, prepared by Ms. Alethea Byers, which paints the picture of Queisha as a young girl who was repeatedly teased and abused by Kerri-Anne and her friends and that she was fearful of Kerri-Anne and stayed away from school on the day before the incident. Queisha indicated that she had no intention of killing or hurting Kerri-Anne, and that she regrets the entire incident. She only wanted to protect herself. Ms. Byers said that the incident involving Queisha is out of character since the community in which she resides, views her as a quiet and respectful young person. Queisha has expressed genuine remorse for her action.

[8] In determining the appropriate sentence to impose on the defendant, 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 characteristics of the offence, the relevant law and the defendant's character.

[9] I am also required to take into consideration the alarming incidence of offences against the persons in which the offenders are young persons and knives are used. The offence to which Ms. Geiger has pleaded guilty is very serious. It is also of great concern that at the time of the commission of the offence, the defendant was a school child, and of greater concern is the fact that a young life has been lost. The Court frowns on the fact that a school child has utilised a knife to inflict a fatal injury on another.

[10] **Court's analysis and conclusion**

Byron CJ as he then was, in **Desmond Baptiste v The Queen et al Criminal Appeals NO 8, 10, 16, 22, 25, 26, 29, 34, 35 and 37 of 2003 of Saint Vincent and the Grenadines**, provided some very useful guidance as to the relevant legal principles that the Court should apply in sentencing an offender. His Lordship dealt with three very important matters namely; the relevance of a guilty plea, age and/or prior criminal history. I purpose to quote extensively from the pronouncement of Byron CJ, which I find to be very instructive. His Lordship said,

“In England a plea of guilty normally attracts a significant, approximately a one third, reduction of the sentence. There are sound public reasons for this. The criminal justice system benefits from genuine pleas. Such pleas spare the Judge, the jury and witnesses the stress and rigours of a full trial. The state saves both time and money. It could be manifestly unfair to accord the identical sentence to co-defendants charged with the same offence where one has pleaded guilty at an early stage and the other has put the state through the ordeal of a long and demanding trial. The defendant who had pleaded guilty is entitled to a considerable discount”.

[11] Sir Denis further stated that:

“While suggesting a discount of the order of a one third however, Lord Taylor, CJ stressed in **Buffrey** that “it would be quite wrong... to suggest that there was an absolute rule as to what the discount should be. Each case must be assessed by the trial Judge on its own facts and there will be considerable variance between one case and another”. In our view, our courts should adopt a similar approach. Clearly, the earlier the defendant pleads guilty, the greater the likelihood that he will receive the full discount permissible. Conversely, a plea of guilty late in the proceedings may not yield much of a discount. The discount should be applied not to the maximum sentence possible under the statute but rather to a notional sentence the sentencer might have given save for the guilty plea”.

[12] His Lordship stated that:

“As to the fact that the offender was committing 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. In **Turner v The Queen (1975) 61 Crim. App. Rep. 67 at page 91**, a case of armed robbery, Lord Lane, CJ stated that “the fact that a man has not much of a criminal record, if any at all, is not a powerful factor to be taken where the offence is of an insubstantial nature”

[13] Sir Denis said that:

“On the issue of the age of the offender, a sentencer should be mindful of the general undesirability of imprisoning young first offenders. For such offenders, the Court should take care to consider the prospects of rehabilitation and accordingly give increased weight to such prospects. Where imprisonment is required, the duration of incarceration should also take such factors into account. In the same vein, in cases where the offender is a mature individual with no apparent propensity for commission of the offence, the sentencer may also take this circumstance into account in weighing the desirability and duration of a prison sentence. As with first time offenders, the more serious the offence, the less relevant will be these circumstances.

[14] **Sentencing Principles**

The Court should apply the principles of sentencing as stated by Lawton LJ in **R v Sergeant 60 Cr App R 74 at p 77**; His Lordship stated that the applicable principles are retribution, deterrence, prevention and rehabilitation.

[15] **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.'

[16] **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."

[17] **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."

[18] **Retribution**

Through this aspect of sentencing, the Court reflects society's intolerance for the defendant's criminal conduct.

[19] **Deterrence**

In view of the fact that Queisha had no previous encounter with the law, I am not of the view that my sentence should reflect the need to deter her from committing any crime. There is no evidence that she is likely to commit any other offence. It is clear to me that her commission of this offence is out of character. This, however, does not negate the fact

that there is a need to deter other persons who are like minded from committing similar crimes.

[20] **Prevention**

I come now to deal with the issue of prevention. There is no need to impose a sentence which will prevent Queisha from committing a crime, as I have stated earlier, since her commission of this offence is out of character.

[21] **Rehabilitation**

In relation to the need to rehabilitate her, it is good that she has commenced counseling. This indicates her acceptance that she is in need of treatment. In addition, I have no doubt that she should be provided with counseling which would assist her in reintegrating with the society and provide her with the life skills to deal with conflicts. Too many young persons resort to violence to resolve conflicts.

[22] **Retribution**

Retribution is by far the most important aspect of the sentence that I will impose. Queisha Geiger must be punished for killing Kerri-Anne. Irrespective of how she was teased, nothing justifies her inflicting the fatal injury on Kerri-Anne.

[23] **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.

[24] I will now consider the mitigating and aggravating factors. The mitigating factors include:

- (a) Queisha Geiger's age of 15 years at the time of the incident.
- (b) She has no previous convictions and is well respected by her community.
- (c) She has pleaded guilty early in the trial.

- (d) She is genuinely remorseful.
- (e) She is receiving therapy.

[25] **Aggravating factors**

The fact that a knife was used to inflict the fatal injury is a matter that weighs heavily in this matter. I frown upon the fact that Queisha took a knife to school.

[26] In weighing the mitigating and aggravating factors, it is clear that the mitigating factors outweigh the aggravating factors. I have no doubt that she is entitled to a one third reduction in her sentence based on the compelling mitigating factors. I have paid regard to the personal circumstances and the subjective factors that might have influenced her conduct. I have also taken into account the fact that Queisha expressed remorse through her counsel and the Probation Officer. I have also considered her social circumstances.

[27] I have no evidence that she is in need of any prolonged period of counseling. However, I am equally satisfied that she is in need of guidance and trust that the period spent in prison would provide her with the opportunity to reflect on the seriousness of her actions.

[28] A sentencer, in determining the appropriate sentence, must also consider the gravity of the injury; a defendant who inflicts more than one injury on the victim is likely to receive a harsher sentence than one who, as in the case at bar, inflicts one fatal injury.

[29] **Sentencing Guidelines**

Our Court of Appeal has set out some very helpful guidelines for sentencing; and in order that there should be consistency, it is incumbent that a trial Court complies with those guidelines, save where there are compelling reasons to depart from them. Manslaughter like other offences can arise based on different combination of facts. The Court must take care in order to ensure that its sentence is just. Unfairness can result from treating alike cases which are unlike. Our Court of Appeal has set a bench mark of 15 years in prison for the offence of manslaughter. This is guideline can be scaled up or down depending on the circumstances of the case. Byron CJ in **Criminal Appeal of Desmond Baptiste v The**

Queen *ibid* said that “A sentencing range should obviate the need for the sentencer fully to consider the host of aggravating or mitigating factors that might accompany any particular crime.”

- [30] Our Court of Appeal has imposed sentences of 10 years in prison, for the offence of manslaughter, in the case of mature defendants. See **Frederick Jackson v The Queen, Criminal Appeal No.6 OF 2001 Saint Lucia** and **Janice Hamilton v The Queen, Criminal Appeal No.9 of 2002 Saint Lucia**.
- [31] Blackstone's Criminal Practice 2002 ed at paragraph Br.31 at pages 130-140 states that the sentencing bracket for the offence of manslaughter has normally been set at a period between 3 and 7 years, although longer sentences have occasionally been upheld.
- [32] In an effort for there to be consistency and in the interest of comity and justice it is always helpful to pay regard to sentences that have been imposed by our Court for similar offences. In **The Queen v Brian Walters Criminal Case No.3 of 2008 British Virgin Islands**, the accused was indicted and tried for the offence of murder. He was found guilty of manslaughter. At the time of the offence, he was 15 years old. The court sentenced him to 6 years in prison.
- [33] In **Don Prosper v The State Criminal Appeal No.10 of 2002 Commonwealth of Dominica**, the appellant, who was 16 years at the time of the incident, was indicted for manslaughter. In that case the appellant went to school with a knife because he was afraid of the deceased. While at school, he indicated to a classmate that he was prepared to kill the deceased if he came after him. Soon afterwards, the deceased pushed the appellant and the appellant took his knife and inflicted fatal stab wounds to the deceased's chest. He was convicted of manslaughter and sentenced to 4 years in prison. His sentence was affirmed by the Court of Appeal.
- [34] In **The Queen v Roy Williams High Court Criminal Case No.13 of 2007 of Antigua and Barbuda**, the defendant pleaded guilty to the offence of manslaughter. At the date of the

trial he was 22 years old. The Court, having taken into account the fact that he used a knife to inflict the injury, together with the other mitigating factors, sentenced him to 8 years in prison.

[35] In **The Queen v Trudy Edward Criminal Case No.56 of 2003 Saint Lucia**, the defendant was indicted for the offence of murder. She was 19 years at the time the deceased received the fatal injury. The defendant pleaded guilty to manslaughter and was sentenced to 7 years.

[36] In **The Queen v Sherfield Bowen Criminal Case No.25 of 2005 Antigua and Barbuda**, the defendant, a mature man, was indicted for the offence of murder. He was tried and convicted of manslaughter; he used a gun to inflict the fatal injuries. The Court sentenced him to 5 years in prison.

[37] A review of the cases, to which I have referred, reveals that none of the cases are similar to the case at bar. Be that as it may, it seems to me that the cases of **The Queen v Brian Walters** and that of **Don Prosper v The Queen** are the closest to Queisha's case. In both of those two cases, the accused was convicted of manslaughter after a full trial, unlike the present case where the defendant has pleaded guilty. Unlike Queisha's case, the defendants in **Don Prosper** and **Brian Walters** would not have received any reduction in their sentence on the basis of a plea of guilt. As stated earlier, in both of the other two cases, each defendant inflicted more than one wound on the deceased. The Court in those cases paid particular regard to the very compelling mitigating factors in each case, including the youthfulness of the offender, the fact that the offender had a clean criminal record and sentenced each defendant to 6 years and 4 years in prison, respectively.

[38] Sentencing is always a matter of the Court's discretion. The offence of manslaughter is a serious one. This is a very sad and unfortunate case. Kerri-Anne has lost her life. I am required to be fair and just to the victim and the defendant. The sentence I impose must reflect Queisha's culpability; it must be commensurate with the seriousness of the offence.

- [39] As a general rule, the Court reduces the sentence imposed on a defendant who pleads guilty by one third. Where as in the case at bar, there are other very strong mitigating circumstances, such as the youthfulness of the offender and the fact that this is Queisha's first offence, there should be a further reduction. Her genuine remorse is another factor that is deserving of serious consideration. The Court does not utilise the maximum sentence in determining the appropriate sentence. The Court is required to utilise the notional sentence it intends to impose and apply the reduction to that sentence based on mitigating factors.
- [40] The Court frowns on Queisha's conduct and will not countenance the use of knives by anyone. Queisha is culpable, taking into consideration the totality of circumstances. I am not of the view that this is the sort of offence for which the Court should be lenient and impose a non custodial sentence. The Court must show its abhorrence to this type of crime and the sentence imposed should reflect this. A custodial sentence is appropriate.
- [41] Finally, in deciding the appropriate sentence, I have paid particular regard to the mitigating and aggravating factors, the character of the offender, the relevant principles of sentencing, the law, the circumstances in which the offence was committed together with the defendant's culpability. I have also found the authorities to which I have referred very useful in my determination of the sentence to impose. In serving the interest of the justice, I have no doubt that the sentence that is appropriate is 5 years in prison. Sentence to take effect from today's date.
- [42] The Court acknowledges the assistance of the Learned Director of Public Prosecutions and Learned Defence Counsel.

Louise Esther Blenman,
Resident High Court Judge.