BRITSH VIRGIN ISLANDS

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)

CASE NO. 4 OF 2006

BETWEEN:

THE QUEEN

and

GERMAINE SEBASTIEN

Appearances:
Mr. Terrence F. Williams DPP and Ms. Tamia Richards for the Crown
Mr. Hayden St. Clair Douglas and Mrs. Margaret Price-Findlay for Germaine Sebastien

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2006: February 27, March 01
2006: March 03

JUDGMENT ON SENTENCING

1. HARIPRASHAD-CHARLES J: The Accused, Germaine Sebastien was indicted for the murder of six-year old Jamiel Greenacre contrary to section 148 of the Criminal Code of the Laws of the Virgin Islands. Upon his arraignment, he pleaded not guilty to murder but guilty to manslaughter. The plea was acceptable to the Crown on the basis that the medical evidence plainly points to substantially diminished responsibility. In R v Cox (M.)[1], it was held that on an indictment for murder, if the medical evidence plainly points to substantially diminished responsibility, it is perfectly proper to accept a plea of guilty to manslaughter based on that ground.

2. A sentencing hearing was adjourned to 1 March 2006 at the request of all parties. Mr. Sebastien is before the Court for sentencing.

[1] (1968) 52 Cr. App. R. 130, C.A.

The facts in outline

3. This is a tragic as well as a difficult case in which little Jamiel Greenacre met his brutal death at the hands of Mr. Sebastien, a mentally- impaired man. The facts of the case as summarized by the Learned Director of Public Prosecutions were not in dispute.

4. On 26 February 2004, Jamiel returned from the Francis Lettsome Elementary School where he was a student. He was living with his grandmother, Mrs. Ruth Gordon. He got home at about 3.20 p.m. After changing into his yard clothes, he picked up a snack and set off riding his bicycle which had been assembled for him the day before. His grandmother looked out of the window and saw Jamiel riding the bike like a 'professional' without training wheels. Like most grandmothers, she was so pleased at Jamiel's accomplishment that she drew it to the attention of one of her workmen, Mr. Quinland. She saw Jamiel riding up and down an area that is behind her house on an unpaved road. He was riding alone. At about 5.00 p.m., she looked outside and did not see Jamiel riding the bike any more. She called out for him but got no answer. She then started looking for him and soon a party joined the search. It was now dust. Subsequently, Marlon McMillan, a member of the search party and godfather of Jamiel, discovered his body in a bushy area covered with women's clothing.

5. The police were summoned to the crime scene and arrived there at about 8.00 p.m. They observed an area of blood some 9 feet away from where the body was found. The bicycle was even further away from where the body was found. Dr. Shailesh Hegde, a medical doctor arrived there at about 8. 25 p.m. The doctor saw the lifeless body of Jamiel and observed trauma wounds to the neck and chest. He pronounced Jamiel dead at 9.10 p.m. An autopsy report revealed the body of healthy child. There were multiple incised wounds of the anterior neck which are confluent and appear almost as one wound except on the right where there appeared to be at least three separate slashes. There were two separate cuts into the thyroid cartilage and two separate cuts into the trachea. There was a laceration of the left jugular vein but both carotid arteries and the right internal jugular were intact. This aggregate wound measures 10 cm overall. On the right side of the neck posteriorly extending to the midline was a 5 cm very deep wound extending down to the

cervical vertebrae. The cervical spine appears grossly intact. The cause of death was bleeding to death and asphyxia.

6. At about 10 o'clock the following morning, the police proceeded to the area. They met Mr. Sebastien at a bus shed just down the road not too far from where Mrs. Gordon lives and in front of the large area where Jamiel's body was found. He was dressed in a pair of white sneakers, a dark coloured vest and beige coloured short pants which were blood-stained. When confronted by the police about the blood stains on his pants and sneakers, Mr. Sebastien said "I cut my hand yesterday."

7. He was arrested on suspicion of murder and transported to East End Police Station. The police retrieved the sneakers and the pair of beige short pants from Mr. Sebastien. DNA analysis was conducted which matched the blood of the deceased on Mr. Sebastien's sneakers and pants. The report concluded that the reconstruction of the pertinent impact blood splatter on the sneakers and front of the short pants as to their origin, direction of travel and location indicated that the individual who was wearing these items of clothing was present and in close proximity to forceful bloodshed. The dropped and splashed blood on the sneakers indicated that they were below the victim who was issuing the blood that fell on the sneakers. The contact bloodstains on the sneakers indicated that they came in contact with the bloody victim's body.

8. The items of clothing which were used to conceal the body of Jamiel were alleged to have been stolen from Althea's Gift Shop at East End which is in close proximity of the crime scene. The facts and circumstances surrounding the alleged burglary are extraneous to the sentencing outcome.

9. Mr. Sebastien was subsequently charged with murder. As already stated, he pleaded not guilty to murder but guilty to manslaughter on the ground of diminished responsibility.

The Psychiatric Evidence

10. The Crown called Dr. June Samuel, a medical doctor by profession with specialty training in psychiatry. She first saw and examined Mr. Sebastien in July 2000. At the time he was serving a prison sentence for marijuana possession.

11. She obtained some background information on him. He was born in the British Virgin Islands and spent some of his early childhood in Nevis where he started school. He returned to Tortola at the age of 13 and dropped out of school at Form 4. He lost his mother at an early age and had a very poor relationship with his father. As a result, he spent a significant part of his life unemployed and living on the streets.

12. He reported marijuana use since the age of 5 and alleged that it was given to him by his father. He admitted to current use even while in prison. He also indicated using alcohol since the age of 8 or 10. At that time he was referred for an assessment because of a-motivational syndrome, that is, his lack of motivation to care for himself in prison. He complained of problems with his memory. He was commenced on Haloperidol, an anti-psychotic drug administered to patients who have some form of psychosis.

13. Dr. Samuel saw him again in 2001 when he was brought in for review. He appeared to be doing well and he was not on medication at that time. She next saw him in 2003. He was hospitalized for an extended period because of concerns of him not having anywhere to live. Repeated attempts to place him failed, as he could not be accommodated at his father's or grandmother's home. He spent four months at the hospital and was receiving mental health treatment. During his hospitalization, Dr. Samuel found him to be very cooperative, at times not exhibiting a lot of motivation in terms of his self care and he was noted to be having some difficulties with his memory, usually not oriented, not keeping up with the days or the months. At that time, he was assessed again as having an ongoing a-motivational syndrome. So, she queried whether there was some level of intellectual abnormality, mental sub-normality and whether there was an underlying schizophrenic process. In June 2003, he was administered the Wechsler Abbreviated Scale of Intelligence. He achieved a score of 79, which is borderline intelligence functioning. Using

the Raven Standard Progressive Matrices, which measures an individual's ability to make comparisons, to reason by analogy and to organize spatial perceptions into related wholes, he was found to be intellectually impaired. At this time, he was suffering from psychosis. She thought he had paranoid psychosis which was substance induced particularly with his long history of marijuana use.

14. In March 2004, shortly after this incident, a Minnesota Multiphasic Personality Inventory (MMPI) was administered. In effect, the report suggested that Mr. Sebastien was experiencing social withdrawal disordered affect and erratic behaviours. He was pre-occupied with feelings of others being against him. Basically, he saw the world as a threatening place. This extends to him feeling as if he is getting a raw deal out of life. There is also some indication of personality de-compensation with associated beliefs of mystical or other powers. He is also inhibited in personal relationships and has very poor social skills.

Diagnostic and forensic formulation

15. Dr. Samuel stated that there are several factors that must be considered in the formulation about Mr. Sebastien. First, in his social and personal history of poor attachments, lack of consistent family connections and relationships, loss of his mother at an early age and subsequent disconnection with his father. This, in addition to his physical instability all contributes to his perceptions of the world, feelings of insecurity and paranoia and his borderline intellectual functioning. Based on feelings of insecurity and paranoia, if he is placed in a situation where he feels he does not have control or that a situation is a threat to him, he can respond in an aggressive manner. He does not satisfy the criteria for mental retardation (mental defect) but his restricted academic and social opportunities in his life makes him particularly vulnerable in situations where he may feel he lacks control.

16. His feelings and thoughts are all aggravated by heavy and prolonged cannabis use, which is known to induce and increase feelings of paranoia and suspicion. In addition, his use of cannabis most likely accounts for the general a-motivation and apathy.

17. His MMPI results are strongly suggestive of an underlying psychotic disorder, possible paranoid schizophrenia or a paranoid psychosis, both of which can be associated with hostility and aggression depending on the severity of the paranoid symptoms. However, he does not clinically exhibit features in keeping with an ongoing chronic psychosis or mental illness. Therefore, it is more likely that he has episodes of acute exacerbations of his paranoia during periods of stress.

18. In summary, Mr. Sebastien has borderline intellectual functioning, with a background history of chronic cannabis abuse and social displacement. These stressors make him more prone to episodes of psychosis and personality de-compensation. His presentations are not in keeping with him having a chronic ongoing psychosis or other mental illness.

19. Dr. Samuel opined that Mr. Sebastien' present medical condition is incurable but can be treated and controlled; that he is not dependent on drugs but he abuses it and if he is not treated, then he remains a potential threat to society generally.

Impact on deceased' family

20. Two years have just passed since that sad day. Although present, the immediate family members including the father, mother and grandmother were still too pained and indignant to address the court but they desired to express their collective views. This they did through a close family member, Dr. Horatio Gordon of Miami, Florida who wrote to the Court. The letter is very strongly worded. One thing is obvious from the letter: the love for Jamiel. His family loved his dearly. He was an exemplary kid. Dr. Gordon described him thus:

> "He was not only a physically beautiful child, but a wonderful child with a great spirit. With a quiet and shy demeanour, he was also obedient, loving, leery of strangers, and the apple of his mother, father, grandmother and other relative's eyes. All who interacted with him came to the same conclusion; he was a pleasant child."

21. The family is aggrieved at the ghastly manner in which innocent Jamiel met his death. In the immediate period after his death, they all experienced sleepless nights. They wished it were a dream but it was only too real. They have now come to grapple with the reality that

Jamiel is no longer alive. They are fairly acquainted with Mr. Sebastien as he sat quite often at the bus stop not too far from their home. Indeed, he sat there the morning after the incident, dressed in the same blood-stained clothes that he wore when he brutally slaughtered Jamiel. This, to my mind, goes to confirm his mental state of mind because a normal thinking person would have fled the crime scene. Jamiel's father had occasionally fed and financially assisted Mr. Sebastien. No doubt, the pain must be more intense.

22. The family's desire is to see justice done. However, I get the innate feeling from the strong-worded letter (even though the Crown judiciously obliterated nauseating parts) that the family expects the worse punishment to be meted out to Mr. Sebastien. While the Court appreciates the impact that the death of angelic Jamiel has had on this grieving family, the Court must act in accordance with established guidelines in sentencing taking into consideration all the facts and circumstances of the case. The Court is the weighing scale and the weighing scale must be balanced.

Plea in mitigation

23. In his fervent plea for a determinate sentence, Mr. Douglas did not at all attempt to trivialize the loss suffered by Jamiel's immediate family. In fact, he shared their anguish and sorrow. Nonetheless, he submitted that as Defence Counsel, he owes a duty to his client to represent him fully and fairly.

24. Mr. Douglas intimated that the starting point in this case is that the guilty plea of Mr. Sebastien must attract a discount. Suffice it to say, this is the correct approach to sentencing. In England, a plea of guilty normally attracts a significant, approximately one-third, reduction of the sentence. There are sound policy reasons for this. The criminal justice system benefits from guilty pleas. Such pleas save the Judge, the jury and the witnesses the trauma and severity of a full trial. The State saves both time and money. Our Courts have adopted such an approach. [2]

[2] See Sir Dennis Byron, CJ in Allan Wilson v The Queen Criminal Appeal No. 10 of 2003 (St. Vincent & the Grenadines) [unreported].

25. Mr. Douglas emphasized that while section 149 of the Criminal Code speaks to life imprisonment, the section must be read in conjunction with section 23. Section 23 in effect gives the Court a discretionary power to impose a shorter term except in the case of a sentence passed in pursuance of section 150.

26. Leading Counsel for the Defence implored the Court to find that Mr. Sebastien is not "mad" but "mentally impaired" when he committed the offence and that his condition, although incurable, is treatable and could be controlled with medications, anti-psychotics and psychotherapy.

27. On the morning of my ruling, one of the Counsel for the Defence, Mrs. Price-Findlay drew the Court's attention to the case of Regina v Peter Bryan[3], which was decided by the Court of Appeal of England and Wales on 31 January 2006. The facts of this case are horrifying and bizarre. On 4 March 1994, the appellant had been convicted of the manslaughter of a young woman, aged 20 and the wounding of her 12 year old brother. He had been made the subject of a Hospital Order. The appellant remained at the Hospital where he had been admitted prior to sentencing and was treated with anti-psychotic drugs. He appeared to respond well to treatment. From 1995 onwards, he showed no symptoms of mental illness. On 10 February 2002, he was released conditionally. In February 2004, he was transferred to another hospital for his own safety and to be more closely monitored. He was on an open ward and his behaviour appeared normal. On 17 February 2004, he was allowed out for the day and he committed the murder of the deceased, Brian Cherry. He met the deceased shortly before Christmas 2003. One Nicola Newman, who would visit the deceased's flat most days to consume drink and drugs introduced the appellant to the deceased. She arrived at the deceased's flat after the murder was committed. When the police arrived, the appellant was standing in the hallway. His hands, jeans and trainers were blood-stained. The officers went into the kitchen, where they found a bloodstained knife and a small amount of what appeared to be "meat" in the frying pan. They then went into the living room, which was in darkness. With the use of a torch, they saw Mr. Cherry's body on the floor. Beside the body was a severed leg and both severed arms. Strewn

[3] Neutral Citation Number [2006] EWCA Crim. 379. Judgment delivered on 31 January 2006.

around the floor were several bloodstained knives and a claw hammer. The appellant admitted killing Mr. Cherry and severing the limbs. He said "I ate his brain with butter. It was really nice…I would have done someone else if you hadn't come along. I wanted their souls."

28. Subsequent forensic examination conformed that the contents of the frying pan was indeed Mr. Cherry's brain. Having initially been remanded to HM Prison, the appellant was transferred to HM Prison Belmarsh 3 days later. There he assaulted members of staff and because of his unpredictable behaviour staff were obliged to use shields when unlocking his cell door. He was eventually placed in seclusion. Three days later, he was transferred to the medium secure room, Luton Ward, because he was considered to have been "settled" over the weekend.

29. He was a patient at Luton Ward. Richard Loudwell, 60 years old was also a patient there awaiting trial for murder. On 25 April 2004, the appellant appeared normal. Later that same day, staff heard two bangs. They subsequently found Mr. Loudwell lying on the floor. Several weeks later, Mr. Loudwell died from bronchopnuemonia. The appellant admitted hitting Mr. Loudwell. He said "I smashed his head on the floor and I tried to strangle him with the cord from his tracksuit bottoms." When asked why he had attacked the victim, he said that he had been thinking about it for a few days and had wanted to eat him, but did not have time. Meanwhile, the appellant had identified another patient whom he said would be next.

30. Five psychiatric reports from four psychiatrists were placed before the sentencing judge. It was common ground that the appellant did not have a defence to insanity but that he demonstrated abnormality of mind sufficient to diminish his responsibility for the offences. The nature of the abnormality was schizophrenia. The appellant was extremely dangerous and manifested no remorse.

31. On 15 March 2005, the appellant pleaded guilty to two counts of manslaughter on a joined indictment. He was originally indicted for murder, but the pleas to the lesser offence were

accepted on the grounds of diminished responsibility. He was sentenced to life imprisonment concurrent on each count. The learned trial judge directed that the early release provisions should not apply, so that the appellant would serve a whole life term.

32. The appellant appealed. The issue before the Court of Appeal was whether the two offences for which the appellant was sentenced were so serious that he should be punished by being detained in custody for the rest of his life, even if in due course it may prove safe to release him. The Court of Appeal found that the trial judge did not properly consider that the appellant's culpability was considerably diminished by his mental illness and that a sentencer should put out of his mind that should he be released, he might behave the same way again. Essentially, it will be for others to decide whether it can ever be safe to release him. The Court of Appeal ordered that the appellant serve a minimum of 15 years after which his mental condition will be kept under review. As long as he constitutes a risk to society, he will be kept in custody. The Court of Appeal opined that the reality is that it is hard to conceive that the appellant will ever be released.

The law

33. As I said in The Queen v Stanley Bertie Jr.,[4] perhaps the most difficult and controversial area for a Judge is fitting the punishment to the crime committed particularly in a case like this one where there is a dearth of jurisprudence in this jurisdiction.

The UK sentencing guidelines

34. The maximum penalty is life imprisonment. The case of Chambers [5] outlines the current UK practice. Leonard J. at pp. 103 –104 states:

> "In diminished responsibility cases there are various courses open to a judge. His choice of the right course will depend on the state of the evidence and the material before him. If the psychiatric reports recommend and justify it, and there are no contrary indications, he will make a hospital order. Where a hospital order is not recommended, or is not appropriate, and the defendant constitutes a danger to the

[4] Case No. 4 of 2005 (High Court Civil) British Virgin Islands [unreported] –judgment delivered on 21 February 2006.

[5] (1983) 5 Cr. App. R (S) 190.

public for an unpredictable period of time, the right sentence will, in all probabilities, be one of life imprisonment.

In cases where the evidence indicates that the accused's responsibility for his acts was so grossly impaired that his degree of responsibility for them was minimal, then a lenient course will be open to the judge. Provided there is no danger of repetition of violence, it will usually be possible to make such an order as will give the accused his freedom, possibly with some supervision.

There will however be cases in which there is no proper basis for a hospital order, but in which the accused's degree of responsibility is not minimal. In such cases, the judge should pass a determinate sentence of imprisonment, the length of which will depend on two factors: his assessment of the degree of the accused's responsibility and his view as to the period of time, if any, for which the accused will continue to be a danger to the public."

35. The case of Birch[6] laid down the criteria for deciding between a hospital order, a life sentence and a determinate custodial sentence. A life sentence was upheld in R v Sanderson[7] where the appellant attacked his girlfriend and beat her to death, striking her more than 100 blows. On appeal, the conviction for murder was reduced to manslaughter on the grounds of diminished responsibility. The question of the appropriate sentence arose on appeal. The appellant had a long history of drug taking and violence towards women that he has become involved with. Two psychiatrists considered that he had an unstable and highly dangerous personality and was prone to paranoid psychosis. The Court reached the conclusion that this was a case for an indeterminate sentence, to protect the public in the persons of young women who might come into contact with the appellant, and to protect the appellant from the risk of behaving in the manner which had brought himself before the Court. The Court was under an obligation to consider what would be an appropriate determinate sentence for the offence, if there were no question of a mental state calling for an indeterminate sentence.

36. In R v Swann[8], the appellant pleaded guilty to manslaughter on the ground of diminished responsibility. He was divorced from his wife who had custody of their children. He obsessed about access to his children and kept one of them. The wife brought

[6] (1989) 11 Cr. App R (S) 202.
[7] (1994) 15 Cr. App. R. (S) 263.
[8] [1971] Crim L.R. 660.

proceedings seeking custody of the child. The appellant visited his wife before the hearing and shot her dead. At the hearing, one doctor reported that he was suffering from a paranoid mental illness that impaired his judgment. Another stated that he could not find any evidence of mental illness meriting his detention in hospital, but there were indications of emotional inadequacy and personality disturbance and he considered that the appellant was provoked to violence and that there were grounds for a plea of substantial diminution of responsibility. He was sentenced to life imprisonment. On appeal, two doctors reported that the appellant was not suffering from and probably never suffered from, any mental illness, and ascribed the offence to provocation leading to an emotional build-up culminating in momentary loss of self-control. In light of these new reports, the appellant advanced a case for a determinate sentence. The Court held that it would be unable to accede to such a submission as the basis on which the indeterminate sentence was passed in such cases was so that the accused should not be detained longer than the authorities considered was necessary, having regard to his progress and his recovery from what might have been a temporary loss of mental power. The Court was not the proper place to bring the submissions that were advanced. They should be directed to the Secretary of State.

37. In R v Harvey and Ryan [9], H pleaded guilty to manslaughter on the grounds of diminished responsibility. H had tied up a fellow prostitute, beat her for a number of hours and then strangled her. Her motive, apparently, was some grievance, real or imagined, about tale-telling and a desire to obtain possession of the deceased's young child. She was sentenced to life imprisonment. H was suffering from a psychopathic disorder and the doctors recommended that she be treated in a hospital. The doctors said that the appellant was very dangerous and aggressive and there was no certain cure for her condition but it could be ameliorated by treatment. They thought she could better be treated in Hospital, though she could obtain treatment in prison. The appellant could be transferred from prison to hospital if sentenced to imprisonment but not from hospital to prison if a hospital order was made. The trial judge took the view that having regard to her dangerous condition the proper course was to pass a sentence of imprisonment, because it might not

[9] [1971] Crim LR 664.

be safe to release her even though nothing further could be done in hospital to cure her. On appeal, the judge's approach was found to be correct.

38. From the authorities, it seems to me that where the nature of the offence and the make-up of the offender are such that the public requires protection for a considerable time unless there is a change in the offender's condition, perhaps a mental condition at present unknown, a life sentence is appropriate, as it will enable some other authority to ascertain from time to time whether the offender's condition has changed and whether it is safe for him to be released; but in a straight forward case of manslaughter, where the verdict is not based on provocation or diminished responsibility, a determinate sentence is apposite. Thus, in R v Picker [10], where the appellant had viciously killed an old man and admitted to so doing, there being no provocation or diminished responsibility, the court issued a determinate sentence.

Section 149

39. Section 149 of the Criminal Code of the Virgin Islands deals with persons suffering from diminished responsibility. Subsection (1) reads:

> "Where a person kills or is party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or other inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts in doing or being a party to the killing."

40. Subsection (3) reduces the liability on conviction from murder to manslaughter. The maximum sentence is life imprisonment.

Sentencing guidelines of our Court

41. I have not been referred to any cases from this jurisdiction dealing with the sentencing of a mentally impaired person. Indeed, there may not be any. But, my own research revealed that there are some Court of Appeal decisions which are not on par but which are helpful in my consideration of an appropriate sentence. In Bertill Fox v The Queen[11], the appellant,

[10] (1970) 54 Cr. App. R. 330.
[11] Criminal Appeal No.40 of 1998 (St. Christopher & Nevis) C.A. [unreported].

a World Champion Body Builder and "Mr. Universe" was convicted of the double murder of his fiancė and her mother. He was sentenced to the mandatory sentence of death. On 11 March 2002, the Privy Council held that the mandatory death sentence passed on the appellant violated his rights under section 7 of the St. Christopher and Nevis Constitution.

42. On 27 September 2002, the appellant was re-sentenced by the High Court. He was given two life sentences. He appeals against his sentence.

43. At the sentencing hearing, there was a psychiatric report prepared by Dr. Diana Tamlyn of Ramplon (Maximum Security) Hospital, Nottinghamshire, England. She stated that the appellant had been a long time user of anabolic steroids which have been used for several decades by weight lifters and athletes to enhance back and muscle performance. In the excessive doses taken by body builders to enhance and maintain their appearance, and particularly if taken over a prolonged period (in his case over 40 years), anabolic steroids can lead to well recognized psychological effects. The main effects of steroid abuse are:
    1) Changes in mood including improved self-esteem and irritability.
    2) Loss of inhibition and a lack of judgment, mood swings and grandiose ideas.
    3) Violent, hostile, anti-social behaviour known as "roid rage" resulting in property damage, self injury, assaults, marriage break-ups, domestic violence and murder.

44. In her opinion, the appellant was likely to have been suffering from an abnormality of the mind, due to prolonged use of anabolic steroid which rendered him susceptible to provocation and lack of judgment.

45. It was argued on behalf of the appellant that if the defence of diminished responsibility had been available in St. Kitts at the time of the appellant's trial, then he would have been liable to be convicted of the offence of manslaughter by reason of diminished responsibility. At the end of the day, the Court was not impressed by the psychiatrist's evidence and dismissed the appeal. The Learned Director of Public Prosecutions conceded that the sentences should be concurrent.

46. In Edward Toussaint v The Queen[12], the appellant killed his wife. He struck her on her head with a piece of wood. She fell down. He gave her 3 more lashes. He then put her in his car and took her to the beach and buried her. He was convicted of murder and sentenced to death. He confessed to the police but nevertheless raised the defence of provocation at his trial. He also led evidence in his effort at establishing possible insanity and/or diminished responsibility. The offence was committed on 16 May 1999. At his trial, he led evidence to demonstrate that as of 2 October 1998 he was diagnosed with and treated for a problem of anxiety and depression. He was placed under the care of the hospital psychiatrist, Dr. Albertine Mathurin-Jurgenson. She saw him in June 2000 and found that he was on medication for manic depression but that he showed no signs of mental illness. The evidence also revealed that the appellant, whilst in prison awaiting trial was treated with Cogentin, Zestin, Haldol and Lithium. The latter two are anti- psychotic drugs.

47. The evidence before the Jury on this issue was that shortly before and shortly after the incident, the appellant was being treated with drugs that were prescribed for the ailment of manic depression. The Court of Appeal held that there was a miscarriage of justice occasioned by the trial judge's inadequate assistance to the jury on this thorny issue of diminished responsibility and had they been given the assistance, they could have properly found the plea of diminished responsibility and return a verdict of manslaughter. The appeal was allowed. The conviction of murder and the sentence of death were quashed. A conviction of the offence of manslaughter was substituted therefor. Given the cruel circumstances of the killing, the sentence was 25 years.

48. In my opinion, the case of Toussaint bears closer affinity to the present case except that the present case has nothing to do with provocation. In fact, there is no personal relationship between the deceased and Mr. Sebastien. One is left to ponder on the motive (s) for the killing. Mr. Sebastien's interviews with the police bore no fruit in this respect.

[12] Criminal Appeal No. 5 of 2000 (Antigua & Barbuda) CA [unreported].

Prison Act, Cap. 166

49. Section 13 (2) of the Prison Ordinance allows the Governor, if he is satisfied that a person detained requires medical or surgical treatment of any description, to allow such person to be taken to a hospital or other suitable place for the purpose of treatment.

Mental Health Act, Cap. 191

50. Section 12 imports section 13 (2) of the Prison Ordinance into the Mental Health Act, and allows the Governor to remove persons who are detained under section 11 of the Mental Health Act for medical or surgical treatment.

Court's considerations

51. Unlike the English judges who have several options open to them, I am confronted from the very inception with the stark reality that I cannot make a hospital order. This is because there is no proper facility in this jurisdiction to house our mentally impaired. However, the Governor has the ultimate power to permit a prisoner to be taken to a hospital or suitable place for treatment outside of the Territory.

52. In those circumstances, the only issue for me to consider is what would be an appropriate sentence for this offence. The two factors that the Court should take into consideration in determining sentence in diminished responsibility cases are:
    1) danger to the public posed by the offender and
    2) degree of culpability of the offence.

53. I have regard to the several reported as well as unreported cases from England and the Eastern Caribbean Supreme Court where sentences were imposed for manslaughter by reason of diminished responsibility. The sentences vary depending on the facts and circumstances of each case. The longest sentence imposed is life imprisonment.

54. I also bear in mind the guilty plea of Mr. Sebastien and I accept his responsibility for the crime was substantially impaired through his mental illness. But, although substantially impaired, Mr. Sebastien does of course bear a criminal responsibility. He was not insane

when he committed this offence. Nor was he unfit to be tried as he has pleaded guilty. There can be no doubt that Mr. Sebastien's mental abnormality diminished his culpability. It did so to the extent of reducing the crime from murder to manslaughter. Thus, as a matter of law, it reduces his responsibility for the killing and at the same time, his culpability. I also bear in mind, that even though Mr. Sebastien has pleaded guilty, he had persistently denied to the police that he committed the offence unlike the appellant in Regina v Peter Bryan, a case heavily relied upon by the defence. Even when confronted by the police about the blood stains, he replied that they were from a cut to his hand. Plainly, the greater the mental disability, the greater the effect in mitigating culpability.

55. I take into account that this case does not involve provocation like many of the cases referred to. This is the case of an innocent child whose throat and neck were brutally slashed for what appears to be no apparent reason.

56. Most importantly, I consider the most important factor of the need to protect the public. Mr. Sebastien still consumes marijuana and he has admitted to its use even in prison. He has had 2 previous convictions for possession of marijuana in 2000. He seems not to appreciate the debilitating effect that the drug has had and continues to have on his mind and he does not see it as a negative influence on his overall mental health. Dr. Samuel has plainly said so. I have nothing to go by except the evidence of the doctor, which struck me as responsible, and which is not patently unsound. I have no basis for a personal judgment. She has studied Mr. Sebastien. I have not. She feels that he abuses marijuana and that he is not dependent on it. She feels that with a history of marijuana use, there is a risk of relapse into that way of life if he is not treated over an extended period.

57. Dr. Samuel opines that Mr. Sebastien remains a potential threat to society and while his psychiatric condition is treatable and can be controlled, he needs to be treated over an extended period of time. In addition, he has to play a role in his own recovery and he lacks that impetus even as it pertains to his personal hygiene. In addition, if Mr. Sebastien requires further treatment, the Governor is empowered to order his removal for medical or surgical treatment.

Conclusion

58. This tragic case must signal a warning to the proper authorities that there is the need for a proper and safe institution to house mentally impaired persons. The general hospital is not such a place. It is unsafe and insecure. People are able to walk liberally in and out as in this case where Mr. Sebastien walked out on one occasion without being discharged. Unfortunately, he committed this horrific crime shortly thereafter.

59. On the whole, I conclude that Mr. Sebastien is a danger to society and has a moderate degree of personal responsibility for this offence in spite of his mental abnormality. I am obliged to consider what would be an appropriate sentence for this offence. In my judgment, this was a grave case of manslaughter; one of the gravest perhaps, as the motive for the killing still remains a mystery.

60. I have taken into account all that was said in mitigation on Mr. Sebastien's behalf including his age and the fact that his culpability was considerably diminished by his mental illness. I also took into account the seriousness of the offence and the horrifying manner in which this innocent child met his death. There is no greater harm known to the criminal law than death. It robs the victim of his life and causes deep distress and deprivation for his or her relatives.

61. There is another question which I must consider: assuming that Mr. Sebastien is cured of his mental illness so that he becomes in effect a different person, how long does justice demand that he should be held in custody for a crime that he committed when he was ill?

62. After careful consideration, I have reached the conclusion that Mr. Sebastien will be sentenced to life imprisonment. After spending a minimum term of 25 years, I will order that he be brought back to court to determine whether he should be released.

The sentence

63. Having taken all factors into consideration, the sentence of this Court is as follows:

1) The Accused, Germaine Sebastien is sentenced to life imprisonment.

2) After spending a minimum of 25 years in prison, Mr. Sebastien is to be brought back to Court with a view to his release if it is established that he is no longer a threat to society. Such release, if any, is to be determined upon further psychiatric evidence.

3) During his period of incarceration, he receives adequate psychiatric treatment.

Indra Hariprashad-Charles
High Court Judge