

SAINT CHRISTOPHER AND NEVIS

IN THE COURT OF APPEAL

CRIMINAL APPEAL NO.12 OF 2004

BETWEEN:

NARDIS MAYNARD

Appellant

and

THE QUEEN

Respondent

Before:

The Hon. Mr. Michael Gordon, QC

Justice of Appeal

The Hon. Mr. Denys Barrow, SC

Justice of Appeal

The Hon. Mr. Hugh A. Rawlins

Justice of Appeal

Appearances:

Dr. Henry Browne, Mr. Anthony Johnson with him for the Appellant

Mr. Dennis Merchant, DPP, Ms. Janine Harris with him for the Respondent

2006: March 21;
May 22.

JUDGMENT

- [1] **RAWLINS, J.A.:** On 7th 2004, the appellant, Maynard, was convicted for the murder of Ernest Henry in 2003. On 22nd July 2004 the trial judge conducted a sentencing hearing in accordance with the guidelines issued in **Spence and Hughes v The Queen**,¹ and kindred cases and sentenced Maynard to imprisonment for life. He appealed the conviction and the sentence. When the appeal came up for hearing, however, Dr. Browne, learned Counsel for Maynard, withdrew the appeal against conviction and pursued the appeal against sentence on the ground that the sentence was unduly severe in the circumstances of the case. He urged us to impose instead a fixed term of years, or, alternatively, a

¹ St. Vincent and the Grenadines Criminal Appeal No. 14 of 1998; St. Lucia Criminal Appeal. No. 20 of 1997.

fixed minimum term within the life sentence, within which time the matter is to be brought up for a court to review his life sentence.

[2] Dr. Browne supported his plea on the grounds that Maynard was young (22 years old at the time of the sentencing) and had an impeccable record. He pointed out, additionally, that Maynard grew up in difficult circumstances, with an absentee father, and, therefore, with a lack of paternal guidance. According to Dr. Browne, Maynard has shown considerable remorse. He urged us to consider the relevant authorities, including **Peter Duncan v The Queen**.² Peter Duncan was convicted for the murder of one Christopher Charles. The sentencing judge followed the procedural guidance for sentencing that was set out by Sir Denis Byron, CJ, in **Evanson Mitcham et al v The D.P.P.**³

[3] The guidelines in **Evanson Mitcham** require the prosecution, where it intends to pursue the death penalty, to give notice to that effect no later than the day upon which the accused is convicted. In such cases the prosecution is required to set out the grounds on which the death penalty is considered appropriate. The guidelines further require that once the prosecution has given notice that the death penalty is being sought, the trial judge should, at the time of the allocutus, specify the date of a sentencing hearing which provides reasonable time for preparation. When fixing the date of a sentencing hearing, the trial Judge should direct that Social Welfare and psychiatric reports be prepared in relation to the convicted person. The burden of proof in the sentencing hearing is on the prosecution and the standard of proof shall be beyond reasonable doubt. The trial Judge should give written reasons for his or her decision at the sentencing hearing. However, where the Prosecution and the trial judge consider that the death penalty is not appropriate, a separate sentencing hearing may be dispensed with if the accused so consents and the accused may be sentenced right away in the normal fashion.

² Grenada High Court Criminal Case No. 111 of 2003 (4th February 2004, Benjamin J.

³ St. Christopher and Nevis Criminal Appeal Nos. 10, 11 & 12 of 2002.

- [4] All indications are that the judge followed these guidelines in the present case, albeit with varying degrees of details. Dr. Browne was no doubt hopeful that Maynard could possibly have the benefit of the result such as in **Peter Duncan**, where Duncan was sentenced to serve a term of seven years imprisonment after being convicted of murder. In the present case, the judge was saved the task of going into the detailed inquiry, which these principles require, because at the commencement of the sentencing hearing, Mr. Merchant, the learned Director of Public Prosecutions, told the court that having read the Social Welfare and Psychiatric Reports he did not think that this was an appropriate case for the death penalty. He thought, however, that Maynard murdered Henry in cold blood and that the act deserved a life sentence.
- [5] The Record shows that the sentencing judge considered the Reports and the mitigating factors highlighted by Mr. Johnson, learned Counsel for Maynard, to wit, Maynard's age and the fact that he had no previous convictions. The judge also considered the circumstances of the offence. He agreed with the learned Director that the life sentence was appropriate because the murder was vicious, cold-blooded and without any apparent motive.
- [6] The evidence presented at the trial, which the jury accepted, reveals that Maynard's attack upon Henry was particularly vicious and cold-blooded. Just after mid-night on 22nd March 2003, Maynard accosted Henry at Upper Market Street, Basseterre. The witness Marilyn Lowrie said that Maynard asked Henry for money, which it appeared that Henry gave him. Maynard advanced even closer to Henry with something in his hand in an aggressive manner. Henry had nothing in his hands. Another young man, Ingle Rawlins Junior, held Maynard's hand and told him to "chill out". Maynard pulled his hand away from Rawlins and launched an attack upon Henry by swinging his hand at Henry's chest and thigh area at least three times connecting with Henry's body on each occasion. Maynard then turned away, put his hand with the instrument under his shirt and walked away. As he turned away, Henry asked Maynard what he (Maynard) had done to him, to

which Maynard responded "Jah Rastafari" and hurried away. Henry, who was sitting, tried to get up but fell into the street bleeding. He was taken to the Accidents and Emergency Department at the J.N. France General Hospital.

- [7] Dr. Hazel Williams-Roberts examined Henry at about 12:40am on 22nd March 2003. Her Report reveals that Henry was unresponsive and without spontaneous respiration. He had a 2.0cm laceration wound to his left parasternal area at the level of the nipple; another laceration wound on the left lower chest, yet another to the anterior aspect of the proximal right thigh, and a puncture wound to the posterior aspect of the left lower chest. Efforts at cardiopulmonary resuscitation were unsuccessful and he was pronounced dead at 1:40am. The autopsy report, which Dr. Stephen Jones, Consultant Pathologist, presented confirms these findings by Dr. Hazel Williams-Roberts. Dr. Jones noted, additionally, that Henry's liver was pale and his spleen was collapsed. He concluded that death resulted from the stab wound that Henry sustained to his left thigh, which severed the femoral artery and vein causing haemorrhage and shock.
- [8] There are only a few parallels between the present case and **Peter Duncan**. In **Peter Duncan**, the learned Director of Public Prosecutions informed the Court that the Prosecution thought that the case was not an appropriate one for which to seek the death penalty. The Court agreed and gave directions for the preparation of a Social Welfare report and a psychiatric report in relation to the accused. The Defence informed the Court that it intended to call witnesses. The sentencing hearing proceeded accordingly. The court reviewed the reports, the circumstances of the case and the pleas in mitigation. The judge noted that Duncan was thirty-three years of age; had no previous convictions; was remorseful about the incident, and is empathetic towards the deceased's mother as a fellow parent. The judge also considered the good character and record of Duncan; the subjective factors that might have influenced his conduct; the design and manner of execution of the offense, and the possibility of his reform and social re-adaptation. Duncan was sentenced to serve a term of seven years imprisonment

mainly because of his record; because the judge found that the murder was not the result of viciousness on the part of Duncan;⁴ that Duncan was not a person with a vicious propensity, and was a good candidate for rehabilitation. The court also considered the fact that Duncan had spent almost 24 months awaiting trial.

[9] Sentencing in murder cases is at the discretion of the judge, who may impose such sentence as the circumstances of the crime and the aggravating and mitigating factors demand. Judges usually try to be consistent and are entitled to consider similar cases. This court would not substitute its opinion for the discretion of the sentencing court as long as the sentence is not outside of the generous ambit within which discretion could have been exercised. There is no indication that the sentencing judge exercised his discretion erroneously by sentencing Maynard to life imprisonment. I see no basis for finding that the sentence is outwith the generous ambit of discretion or disproportionate compared with similar cases. I am confirmed in this view on a review of the recent sentencing decisions of this Court, and, in particular, the case **Kamal Liburd and Jamal Liburd v The Queen**.⁵ In this case two brothers were charged with the murder of one Steadroy Henry Bart. Kamal, who was 24 years of age was convicted of murder and sentenced to life imprisonment. Like Maynard, he had no previous convictions. This Court dismissed his appeal and confirmed his sentence.⁶

[10] The evidence is that Jamal was seated on a wall in Basseterre. Bart approached and threatened to slap him. An argument ensued. During the argument, Bart struck Jamal about the face or head. Jamal thereupon got up and moved away and Bart and Jamal threw bottles and stones at each other. Bart ran. Kamal and Jamal were then in hot pursuit of him. Kamal caught up with him (Bart); grabbed him and swung a club at his head. Bart avoided the blow and escaped Kamal's

⁴ The matters that led to the murder commenced when Duncan tried to quell an incident in which the deceased, a teacher, was involved in bottle throwing.

⁵ St. Christopher and Nevis Criminal Appeal Nos. 9 and 10 of 2003 (22nd November 2004).

⁶ Jamal, who was 20 years old, was convicted of manslaughter and imprisoned for 30 years. This Court also confirmed his sentence.

grasp. He ran pursued by Kamal and Jamal, both armed with sticks and bottles. Bart stopped running after awhile and began moving from side to side in the road in a squatting position. While he did that and had nothing in his hand, Kamal inflicted a blow with a club to his head. Bart fell to the ground. Jamal then threw a bottle which struck Bart on his head. The facts in the present case could not have commended Maynard to the judge for treatment that was more favourable than that which Jamal Liburd received. He murdered Henry viciously, in cold blood and without any apparent motive.

[11] In all of the forgoing premises, I would dismiss the appeal and confirm the conviction and sentence.

Hugh A. Rawlins
Justice of Appeal

I concur.

Michael Gordon, QC
Justice of Appeal

I concur.

Denys Barrow, SC
Justice of Appeal