IN THE HIGH COURT OF JUSTICE

SAINT CHRISTOPHER AND NEVIS

SAINT CHRISTOPHER CIRCUIT

(CRIMINAL)

SKBHCR2004/0061

DIRECTOR OF PUBLIC PROSECUTIONS

V

CRISPIN PRENTICE

Appearances:
Mr. Dennis Merchant Director of Public Prosecutions for the Prosecution.
Mr. Chesley Hamilton for the Defence

2006: June 8, 26, and July 17

JUDGMENT ON SENTENCING

[1] On the 28th day of June 2004 Crispin Prentice left his home with a gun in his possession. He later walked to the house of a friend Sheldon Cannonier who was a co-accused in his trial for murder. At those premises Prentice's girl friend again saw the gun. She was unable to confirm that he took the gun with him when he left Cannonier's house to go to Warner Park that afternoon. However some time after 3 pm as the two companions, Prentice and Sheldon Cannonier were sitting together on a wall in Warner Park a commotion started in the crowd. Bottles were thrown, knives were pulled, people started to run and Crispin Prentice was seen by the witness Devon Williams to pull a silver gun from his pocket and "let go a shot." A young man who had traveled to St Kitts from Tortola BVI fell to the ground. He later died from the injuries sustained by a gun shot wound.

[2] Dr. Stephen Jones the Pathologist found that death was caused by "gunshot injury to the head." He had described the injury as a 1.2 cm gunshot wound of the right posterior scalp, located 6 cm posterior to and 3cm superior to the tragus of the right ear.

[3] Prentice fled from Warner Park and sought refuge at the house of a friend namely Valencia Richards/ Cannonier, the sister of the co-accused Sheldon Cannonier. There he confessed to his girl friend Rosetta Jarvis that he had shot someone in the Park and it was the wrong person. Valencia Richards/Cannonier overheard the conversation between Rosetta Jarvis and Crispin Prentice from her bedroom.

[4] Prentice was subsequently arrested and charged and a preliminary inquiry was held in the Magistrate's Court where Prentice was committed to stand trial in the High Court for the offence of Murder. After a trial lasting 3 days Prentice was found guilty of murder by the jury. His sentencing was adjourned to 26th June when reports from a probation officer and a psychiatrist were presented to the court. Prentice's cousin, Diana Prentice also gave evidence and pleaded for mercy on his behalf. She was not able to account for the years when her cousin appeared to begin to go astray, indicated by frequent lateness, absenting himself from school, and eventually earning himself an expulsion.

[5] It is noted that in the report of the probation officer there is no evidence of remorse for the act of murder. Prentice says he is sorry somebody got killed but insisted that he was not the killer. He insists that the witnesses who gave evidence against him namely his girlfriend Rosetta Jarvis and Valencia Richards were set up to make their statements to save his co-accused Cannonier. But Prentice cannot explain why the eyewitness in the Park, Devon Williams would say that he saw Prentice fire the fatal shot.

[6] The facts as they are, no doubt point to the guilt of Prentice and it is believed indeed that he did shoot someone that he did not intend to shoot. The niggling issue therefore is, did he intend to kill the person whom he really intended to shoot, or was he just aiming to scare off the persons whom he presumed to be his foes or enemies on the day in question. This issue remains unclear. It may not have been an issue which bothered the jury in that

they would have been told that intent is to be judged on the basis of a person's action and it can be fairly concluded that a person who raises a gun aims and fires into a crowd intends to kills someone in that crowd. The task of the court is somewhat more complex in assessing possible mitigating factors.

[7] Nothing is said about the person whom Prentice perceived to be his foe. All we know is that it was not the man whom he killed. This leaves open the possibility that Prentice may have been reacting to something which he thought threatened himself and his friends. No doubt this would have been an overreaction but it could have been a response triggered by fear anger or provocation as much as by pure malice or intent to kill.

[8] There were no defences offered by the convict other than the position that he did not commit the murder. There is no explanation offered by the convicted man and therefore nothing specific on which he can rely to anchor a serious plea in mitigation. Nevertheless, to the extent that there may be mitigating factors in the circumstances I must take them into consideration. I note that it was part of the evidence of Rosetta Jarvis that Crispin Prentice had told her that he was of the view that there were Market Street fellows in the Park watching him that afternoon.

[9] In The Queen v Peter Hughes Privy Council Appeal No. 91 of 2001 Her Majesty's Board effectively abolished the mandatory death sentence for the offence of murder. Courts of the Eastern Caribbean where the penalty of death still applies in the case of murder are obliged to follow the guidelines laid down in that case for the sentencing of persons found guilty of murder. This is such a case. To put in my own words what was stated in that case, I would outline it as follows. The authority given by section 2 of the Offences against the Person Act cannot be challenged constitutionally because the state's right to apply the death penalty is recognized by section 4 of the Constitution of Saint Christopher and Nevis. What may be challenged as being unconstitutional is an apparent requirement of Section 2 of the Offences against the Person Act, that all cases of murder should be punished by death. According to the reasoning in Hughes this requirement flies in the face of section 7 of the Constitution which states that a person shall not be subjected to

torture or to inhuman or degrading punishment or other like treatment. It concludes that the imposition of the death penalty without providing so much as a chance for the convicted person to make a plea in mitigation and ask for a sentence other than death or one more fitting to the specific circumstances of the case amounts to inhuman and degrading punishment and would therefore be in breach of Section 7 of the constitution. The task then for each judge in sentencing in a murder case is to apply such sentence as may be appropriate to the kind of crime committed within the broad scope of possible circumstances which may be defined as murder.

[10] In essence then what is missing from the statutory formulation of the sentence without more is the individuation of the death sentence. The Board rejected the act of clemency of an Advisory Council or the like, which is an executive body mandated to carry out an executive act as a real substitute for judicial determination of the appropriate sentence. See Reyes v The Queen [2002] UKPC, 11.

[11] Pursuant to the conclusion which they arrived at in Hughes their Lordships laid down the following guidelines for judges considering the appropriate sentence for murder

> *"They have the appropriate training and experience. They can set out the reasons for choosing any particular sentence. If they impose an excessive sentence, they can be corrected by the Court of Appeal. In all cases these advantages are valuable. They must be that much more precious when the choice is between life and death. It follows that the decision as to the appropriate penalty to impose in the case of murder should be taken by the judge after hearing submissions and where appropriate, evidence on the matter. In reaching and articulating such decisions, the judges will enunciate the relevant factors to be considered and the weight to be given to them, having regard to the situation in St Lucia (substitute St Kitts and Nevis). The burden thus laid on the shoulders of the judiciary is undoubtedly heavy but it is one that has been carried by judges in other systems. Their Lordships are confident that the judges in Saint Lucia (substitute Saint Kitts and Nevis) will discharge this responsibility with all due care and skill."*

[12] In the precursor to the Board's decision in Hughes, the Court of Appeal Criminal Appeals No.20 of 1998 and 14 of 1997 Newton Spence v The Queen and Peter Hughes v The

Queen, the Honourable Sir Dennis Byron CJ in explaining the approach to individuation of the sentence for murder stated at paragraph 42 of the Judgment.

> *"A person convicted of murder could have committed the crime with varying degrees of culpability. The mandatory death penalty precludes the court from considering whether the penalty is appropriate to the particular offence and offender and there is no possibility of review from a higher court. The mandatory imposition of death deprives the person of their right to life solely upon the category of crime for which the offender is found guilty thereby eliminating reasoned basis for sentencing a peculiar individual to death and failing to allow a rational and proportionate connection between individual offenders their offences and the punishment imposed upon them."*

In reference to the Inter-American Convention on Human Rights (ACHR) the learned Chief Justice further opined,

> *"The convention requires an effective mechanism by which a defendant may present representations and evidence to the sentencing court as to whether the death penalty is a permissible or an appropriate form of punishment in the circumstance of the case. The mitigating factors may relate to the gravity of the offence or the degree of culpability of the particular offender and may include such factors as the offender's character and record, subjective factors that might have motivated his or her conduct, the design and manner of execution of the particular offence, and possibility of reform and social readaptation of the offender."*

[13] I am therefore given the task of choosing the appropriate sentence in the circumstances of this case. I do not think that it requires a death penalty response. Prentice is a 23 year old youth who has no previous convictions. There were clear signs in his younger life that all was not well. But these apparently went unheeded. However he has been convicted of committing a senseless crime which occurred as much out of reckless disregard for the lives and limbs of members of the public who happened to be at Warner Park on the afternoon of the murder, as it may be out of malice with regard to any particular individual. Though not requiring the death penalty, in my view the crime requires a firm and tough response. In the circumstances I think the fitting sentence would be 25 years imprisonment and I so order as the sentence in this case against Crispin Prentice for the Murder of Akeal Brookes on the 28th day of June 2004.

Francis H V Belle
High Court Judge