

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

(CRIMINAL)

CRIMINAL CASE NO 0053/2002

BETWEEN

THE QUEEN

Crown

v.

HENRY WEEKES
EVERETTE CRUMP
PAUL EPHRAIM
KESTER BAILEY
DALE CHRISTIAN

Defendants

Appearances:

Mr. Anthony Armstrong, Director of Public Prosecutions for the Crown
Mr. Ralph Francis for the First and Second Defendant
Mr. Hugh Marshall Jnr for the Fourth Defendant
Mr. Steadroy Benjamin for the Third and Fifth Defendant

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2007: June 18th
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JUDGMENT ON SENTENCING

[1] **Blenman, J:** Mr. Henry Weekes, Mr. Everette Crump, Mr. Paul Ephraim, Mr. Kester Bailey and Mr. Dale Christian (the defendants) were tried on indictment, preferred by Mr. Anthony Armstrong, the Learned Director of Public Prosecutions, which charged them with having murdered Mr. Owen Douglas on the 12th day of March 2002, at Gray's Farm, Perry Bay in the Parish of St John's in Antigua and Barbuda. During their trial by a mixed jury and after the DPP had adduced evidence through four (4) witnesses they changed their pleas and pleaded guilty to the lesser count of manslaughter. Consequent upon their change of plea

the Court directed the jury to return a verdict of not guilty to the offence of murder but guilty to manslaughter in relation to each accused.

[2] Mr. Anthony Armstrong, the Learned Director of Public Prosecutions in prosecuting the case against the defendants relied on the principle of joint unlawful enterprise and all of the defendants were implicated in the offence. He adduced evidence in this regard, particularly through Mr. Odeba Benjamin who was the eye witness.

[3] The defendants are now before the Court for sentencing.

Background Facts

[4] Mr. Anthony Armstrong, the Learned Director of Public Prosecutions presented the facts and in so doing adopted the evidence stated by the main witness, Mr. Odeba Benjamin. Mr. Armstrong said that at the time of his death Mr. Owen Douglas was a young man of 23 years old. He was alleged to have stolen money from one Mr. Kenaz Whyte's business place (Kemwah's yard) in Gray's Farm, Perry Bay on the night of 9th March 2002. Also, Mr. Odeba Benjamin was alleged to have stolen the money together with Mr. Douglas. On 10th March 2002, at around 430, Mr. Douglas was at the race course at Cassada Gardens in St Johns; his friend Mr. Odeba Benjamin and a Mr. Miguel Walcolm were also at the race course. Mr. Benjamin said that while he was at the race course he saw Mr. Whyte who was in the company of Mr. Bailey, Mr. Christian, Mr. Weekes, Mr. Paul Ephraim and other named persons. The men together with Mr. Whyte approached Mr. Benjamin and Mr. Whyte accused him of having robbed his business place and stolen his money which he denied, whereupon Mr. Whyte struck him causing him to fall to the ground. Mr. Bailey placed a chain around his neck and pulled him up from the ground. Mr. Benjamin says that he was taken in chains to Mr. Douglas by Mr. Bailey at this time the other men were still present. Once Mr. Benjamin was in the presence of Mr. Douglas, Mr. Whyte asked Mr. Douglas if he knew Mr. Benjamin whereupon Mr. Douglas said "yes", and Mr. Whyte struck Mr. Douglas who retaliated by hitting him; Mr. Whyte then gave instructions to the men, who by then had surrounded Mr. Douglas and Mr. Benjamin, to hold Mr. Douglas, which

they did. Thereafter, Mr. Christian, Mr. Bailey, Mr. Weekes and Mr. Paul Ephraim started to beat Mr. Douglas.

[5] During the same afternoon, at the race course all of the men collected Mr. Walcolm and took him together with Mr. Douglas and Mr. Benjamin to a jeep owned by Mr. Weekes. Mr. Benjamin was first put into the jeep, by this time Mr. Bailey was also in the jeep. Mr. Douglas resisted being put in the jeep and he was beaten by Mr. Ephraim, Mr. Christian, Mr. Weekes and Mr. Whyte and forced into the jeep that was driven by Mr. Weekes. Mr. Douglas, Mr. Benjamin and Mr. Walcolm were taken in the jeep, in which Mr. Bailey, Mr. Christian and Mr. Ephraim were, to a yard in Grays Farm, Perry Bay at which Mr. Whyte has his business place (Kemwah's yard). On reaching Kemwah's yard, the three men were pulled out of the jeep and taken under a shed by Mr. Weekes, Mr. Bailey, Mr. Christian and Mr. Ephraim. Mr. Douglas and his friends received a severe beating while they were under the shed from Mr. Ephraim, Mr. Weekes, Mr. Bailey, Mr. Christian, Mr. Crump and other named persons who joined the beating. This happened in the full view of onlookers. Persons who attempted to enter the yard were chased away by the defendants. Indeed, while still under the shed Mr. Douglas received a most severe beating at the hands of the defendants; his hands were tied so too were the hands of Mr. Benjamin and Mr. Walcolm (and they could not resist). Having received the severe beating with hands, pipe and other things Mr. Douglas lay, helpless on the ground, under the shed. While he was on the ground, Mr. Weekes threw a dumbbell on him twice saying "you playing dead" and Mr. Crump stomped on Mr. Douglas with his feet. By this time Mr. Douglas was crying. Mr. Benjamin said that Mr. Whyte was present during the beating and maintained that "he wanted his money". While Mr. Douglas lay on the ground, Mr. Weekes brought out some dogs and the dogs were let loose on Mr. Douglas who was still lying on the ground under the shed, helpless.

[6] Having received the severe beating at the hands of the defendants, Mr. Douglas became weak and helpless and could not get up. He appeared dead. Later that night, he was taken to the Holberton hospital and was examined by Dr. Joey John, a leading surgeon by this time he was brain dead (he was comatose) he also had bruises and abrasions to his

body. He was in respiratory distress. A CAT scan of the brain revealed a left subdural haematoma. Medical procedures were performed on Mr. Douglas and he was taken to the Intensive Care Unit but continued over the two following days to do poorly and deteriorate. He eventually died on 12th March 2002. On the 12th March 2002 Dr Leslie Simon, renown pathologist performed a post mortem on Mr. Douglas' body and determined that the cause of his death was massive subdural haemorage on the left side of his brain main caused by blunt trauma.

Law

- [7] The relevant statutory provision is section 5 of the Offences Against the Persons Act Cap 300 Laws of Antigua and Barbuda (the Act). Section 5 of the Act empowers the Court to impose a sentence of a maximum period of 35 years for the offence of manslaughter.
- [8] I am required to determine the appropriate sentence that should be imposed on each offender. In determining what is an appropriate sentence to impose on an offender, a Court will take into account the facts of the case; the gravity of the offence; the applicable principles of sentencing; the mitigating and aggravating factors; the applicable law and the characteristics to the offender. In addition, the Court in seeking to be just must take into consideration the victim of the offence, who the case at bar is Mr. Owen Douglas, deceased, a young man. In applying the well known principles the Court recognizes that no two cases are alike and each case must turn on its own facts in the determination of the appropriate sentence. In cases of manslaughter, as in all cases, different combinations of facts present themselves and it is in this context that the Court is properly clothed with the discretion to determine the appropriate sentence. Unfairness can result from treating alike cases which are unlike. In this context guideline judgments are useful, since in addition to determining the starting point or the range of sentences, they also indicate the considerations which ought to be taken into account or (occasionally) left out of account.
- [9] In Criminal Appeal Nos. 8, 10, 16, 22, 26, 29, 34, 35, 37, 41 and 46 of 2003 **Desmond Baptiste et al v The Queen** (Saint Vincent and the Grenadines) Byron CJ examined the sentencing objectives and the factors and other matters that should inform a sentencer in

fulfilling the task of sentencing. Speaking about the sentencing range in paragraph 3 *ibid* Byron CJ said:

“That a sentencing range should not obviate the need for the sentencer fully to consider the host of aggravating or mitigating factors that might accompany any particular crime. The sentencing of an offender who has been found or who has pleaded guilty to an offence is a duty of the presiding judicial officer having regard to the principles and rules provided by statute and common law.”

- [10] In addition, our Appeal has set guidelines as to the possible range of sentences that should be imposed on a defendant who is convicted of the offence of manslaughter. Indeed, the Court has established a bench mark of 15 years for a conviction for the offence of manslaughter. This bench mark can be scaled up or down depending on the circumstances of the case. The Court of Appeal has also indicated that the guidelines are to be utilized by the trial judge in whom inheres the discretion to determine the appropriate sentence. A review of the recent decisions of our Court of Appeal indicates that the Court has ordered sentences ranging from 5 years – 30 years for the offence of manslaughter.

Mitigating Factors and Aggravating Factors

- [11] The Court must also pay regard to both the mitigating and aggravating factors, in relation to each offender. Through mitigating factors the offender's culpability is enhanced. It is recognized that sentencers should deal less severely with the young offenders. Where there are aggravating factors, the punishment is more severe. Aggravating factors include violence of gratuitous or excessive nature that is violence over and above the violence necessarily involved in the act itself.

Guilty Plea

- [12] I come now to address the guilty plea. Where the offender pleads guilty the Court shall take into account the plea and the stage of the proceedings at which the offender indicated an intention of doing so. In the case at bar, each of the defendants has pleaded guilty during the trial, I am of the view that each of the defendants is entitled to receive a discount for so doing. I am buttressed in my view by the very instructive pronouncements of Byron CJ in Civil Appeals Nos. 8, 10, 16, 22, 26, 29, 34, 37, 41 and 46 of 2003 **Desmond**

Baptiste et al v The Queen *ibid.* His Lordship Byron CJ stated at paragraph 28, 29 and 30 as follows:

“28 In England a plea of Guilty normally attracts a significant, approximately a one third, reduction of the sentence, there are sound public policy reasons for this. The criminal justice system benefits from genuine guilty 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 has pleaded guilty is entitled to a considerable discount. While suggesting a discount of the order of 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.”

“29, It must be stressed though that the more serious the offence, the less relevant will be this circumstance. In **Turner v The Queen** 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 into consideration when the Court is dealing with cases of this gravity”. Conversely, the lack of a criminal record would be a powerful mitigating factor where the offence is of an insubstantial nature.

“30, 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 weighting 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."

- [13] There are other general principles that the Court should apply in sentencing. In **R v Sergeant 60 Cr App R 74 at p 77** Lawton LJ identified the classical principles of sentencing as being retribution, deterrence, prevention and rehabilitation. These principles were judicially acknowledged by Byron CJ *ibid*, at paragraph 23, 24, 25 and 26 where His Lordship stated as follows:

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."

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 deterrent 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."

Rehabilitation

"Here the objective is to engage the prisoner in activities that would assist him with 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.”

- [14] Further, the matter of rehabilitation was considered by the learned authors Andrew Von Hirsh and Andrew Ashworth, in their treatise *Principled Sentencing Readings on Theory and Policy* at page 1, where they state as follows:

“Rehabilitation is the idea of “curing” an offender of his or her criminal tendencies. It consists, more precisely, of changing an offender’s personality, outlook, habits, or opportunities often, rehabilitation is said to involve “helping” the offender, but a benefit to the offender is not necessarily presupposed: those who benefits are other persons, ourselves, who became less likely to be victimized by he offender”

- [15] Andrew Von Hirsh and Andrew Ashworth in *Principled Sentence* *ibid* at page 53 state under the caption “Punishment and Deterrence” that:

“Where an unlawful act has been committed which is followed, or threatens to be followed two wishes naturally suggest themselves to a sentencer’s mind: *First, to obviate the danger of the like mischief in future: secondly to compensate the mischief that has already been done. The mischief likely to ensue from acts of the like kind may arise from either of two sources – either the conduct of the party himself who has been the author of the mischief already done, or the conduct of such other persons as may have adequate motives and sufficient opportunities to do the like.*

- [16] In relation to “Prevention”, Andrew Von Hirsh and Ashworth *ibid* state also at page 54 as follows:

“General prevention is effected by the denunciation of punishment, and by its application, which, according to the common expression, serves for an example. The punishment suffered by the offender presents to every one an example of what he himself will have to suffer, if he is guilty of the same offence. General prevention ought to be the chief end of punishment, as it is its real justification, if we could consider an offence which has been committed as an isolated fact, the like of which would never recur, punishment would be useless. It would be only adding one evil to another. But when we consider that an unpunished crime leaves the path of crime open, not only to the same delinquent, but also to all those who may have the same motives and opportunities for entering upon it, we perceive that the punishment inflicted on the individual becomes a source of security to all.”

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[17] Andrew Von Hirsh and Andrew Ashworth *ibid* say as follows at page 30:

"Sentence is usually based on the seriousness of the offender's crime or on his need for treatment, it will imply something about the impropriety of the behaviour." Conduct that is more blameworthy – in the sense of involving greater harm and culpability – is to be (and thereby condemned more severely; conduct that is less reprehensible is to be punished (and hence censured) more mildly."

[18] In my consideration of the appropriate sentence that should be imposed on each offender, I am guided by the very useful principles stated above. I propose now to determine the sentence that should be imposed on each offender, taking into consideration the totality of circumstances and in so doing I am ever so mindful of the need to ensure that the rule of law remains paramount so too must the principle of legality. It is totally wrong for members of the public to take the law into their hands and to attempt to meet out their own punishment to persons, whom they believe have wronged them; this if allowed to continue unabated would result in a state of lawlessness in Antigua and Barbuda. The Court frowns upon "vigilante" justice and does not countenance acts which amount to "eye for eye" sort of justice.

[19] In addition, I have no doubt that the offence to which the defendants have pleaded guilty is very serious. For what it is worth, there is general concern in Antigua and Barbuda in relation to the seeming upsurge in crimes of violence including gang related violence. In the case at bar, the deceased was beaten for several hours by the defendants, who used sticks, pipes, feet and hands to inflict injury on him in the full glare of onlookers. This can hardly be acceptable in any civilized society. In determining the appropriate sentence to impose on each defendant I will bear in mind that each was part of a joint unlawful enterprise while paying regard to the individual culpability of each defendant.

Dale Christian

[20] I will now address Mr. Dale Christian. In a most passionate and emotional plea Learned Counsel Mr. Steadroy Benjamin urged that mercy and leniency be extended to Mr. Christian since he comes from a deprived social background and this has contributed to his lifestyle, in no small measure. He was 23 years old at the time of the incident and is remorseful over the entire incident. Counsel opined that though he has a number of convictions the court should give him another opportunity to mend his ways. His family background was unstable since his father died when he was very young and his mother raised him together with 4 other siblings and without any assistance. He deserves some leniency.

[21] In determining the sentence to impose as stated above, I must ensure that the sentence reflects the culpability of the accused, taking into consideration the seriousness of the offence and the established pattern of sentences for offences of a similar nature. I must also make allowance for the mitigating factors that are relevant to him which may serve to reduce the sentence including the fact that he has pleaded guilty and his youthfulness. However, I cannot downplay the fact that Mr. Christian played a major role in the joint unlawful enterprise. Starting at the race course at Cassada Gardens, he was instrumental in beating and placing Mr. Douglas into the jeep. At Kemwah's yard he participated in the cruel beating of Mr. Douglas. Examining his antecedents, I observe that he has an impressive criminal record. He has pursued a career of crime. It is noteworthy that several of his convictions are violence related including wounding with intent. I am not satisfied that even though he has been imprisoned on several occasions that he has benefited from the incarceration. My observation of his demeanour during the trial and more specifically during the sentencing hearing has given me cause for pause. He seems not to appreciate the seriousness of what he has done despite the exhortation of his counsel to the contrary. I am hopeful that the sentence that the Court will impose on him will go some way in thwarting his recidivism.

[22] With respect, I am of the considered view that even though Mr. Christian is a young man he needs to be kept away from the society for a while, in order for the community to be protected. He has to be deterred from his criminal career. The sentence that I will impose takes into consideration that he has spent 5 years in custody and it is my hope that he uses the time which he will spend in prison to obtain some rehabilitation while in custody, of which he is obviously in need; It may also serve him well if he uses the time to reflect on the serious and devastating consequences of his actions. Accordingly, I have no doubt that the appropriate sentence to impose on him is a sentence of 6 years in prison to take effect from today's date. He is still a young man who ought to take advantage of the opportunity for rehabilitation so that he can be reintegrated into the society and make a contribution thereto on his release.

Kester Bailey

[23] Mr. Hugh Marshall Jnr Learned Defence Counsel has implored me to look at the actions of each individual defendant in deciding the appropriate sentence. He urged the Court not to impose a custodial sentence on Mr. Bailey since his involvement in the incident was minimal. Mr. Bailey is unknown to the law and the Court must pay particular regard to this fact in determining its sentence. Mr. Percy Adams who is the Chief Officer of Her Majesty's Prisons provided character evidence on behalf of Mr. Bailey. Mr. Adams has been in employ of Her Majesty's Prisons, for in excess of 18 years. He knows Mr. Bailey who has been an inmate of Her Majesty's Prisons since 2002 to the present time and his behaviour is "good for an inmate". On at least one occasion Mr. Bailey intervened and put himself at the risk in preventing an inmate from stabbing another; he has also assisted Prisoner Officers in apprehending another prisoner who had run away. Mr. Marshall said that there is no evidence before the Court to show that this incident involving Mr. Bailey was not out of character. Mr. Bailey is regretful over the entire incident and apologizes to the victim's family. Counsel urged the Court to take into consideration the mitigating factors and the fact that Mr. Bailey has spent 5 years in custody and give him an opportunity to be reunited with his family immediately.

[24] I have given careful consideration to the stirring plea in mitigation by Mr. Marshall and to the totality of the circumstances. Mr. Bailey's clean record and youthfulness weighed heavily in my deliberation. The picture Mr. Adams painted of Mr. Bailey was that of a good and considerate prisoner. It is very unfortunate that he chose to partake in such a very heinous crime. The Court cannot turn a blind eye to the circumstances of the offence but considers favourably the character evidence adduced on his behalf. He was integrally involved in beating Mr. Douglas and though he did not play a major role in the beating Mr. Douglas, he is culpable. Other persons who may be inclined to commit similar offences must be deterred from similar conduct; I must bear this in mind when I am sentencing him. I have no doubt that a custodial sentence is appropriate. The Court must punish him and show its disapproval of the offence of which he has been convicted. There is no suggestion that there is a risk of recidivism on his part, I would therefore be lenient in imposing a sentence on him which takes into consideration the fact that he has spent 5 years in custody, that he has pleaded guilty and has a clean record (for which he gets credit). Accordingly, the order of the Court is that he is sentenced to 3 years in prison to take effect from today's date.

Paul Ephraim

[25] In mitigating on behalf of Mr. Paul Ephraim, Learned Counsel Mr. Steadroy Benjamin stated that prior to the incident Mr. Ephraim had no previous convictions. At the time of the incident he was 40 years old, unmarried and the father of children. Mr. Adams, the Chief Officer of the Prison also provided character evidence on his behalf. Mr. Paul Ephraim, stated Mr. Adams, is involved in the making of craft in prison and he is trusted by the prison authorities to a "certain degree." He is allowed to work under supervision. The mitigating factors that are relevant to him include the following: he pleaded guilty; he has no previous conviction and seem to have been industrious in trying to make something of his life since he came from a socially deprived background. He, very commendably, sought to do better for himself and obtained qualification in a trade. He migrated to St Croix where he worked until his return to Antigua a few years ago. He has 3 children who are minors. Mr. Ephraim has been in custody for 5 years and there is every indication that he will be able to reintegrate into society and to make a contribution if he is afforded the

opportunity; against that background Learned Counsel Mr. Benjamin asked that justice be tempered with mercy.

[26] I have carefully considered the submissions of Learned Counsel, Mr. Steadroy Benjamin and I have reviewed the totality of the circumstances; I am of the considered view that Mr. Ephraim was present at the race course at Cassada Gardens and Kemwah's yard and took part in the beating of Mr. Douglas. It is clear to me that he played a significant role in the incident that led to Mr. Douglas' death. This is a very serious offence and he played a very pivotal role in the incident; he was a man of mature age. Given his wisdom, he should have shown more restraint and prevented the others from their unlawful conduct. However, he seemed to have had limited schooling and this may have contributed to his lack of good leadership on that fateful day. He is very culpable. While there is no doubt that he did his best and obtained a trade and went to live in St Croix and eventually returned here, I have no doubt that he is very blameworthy in this incident. I am however of the considered view that there is hope for him to mend his ways given the fact that he is unknown to the law. Also, I note that he is remorseful. The mitigating factors in his favour are very compelling including the fact that he has pleaded guilty and is not known to the law; he is the father of 3 children. While he must be given credit for living a crime free life up to the age of 40 and there is no suggestion that there is any risk of repetition of the offence, I cannot overlook the fact that he acted very cruelly and beat Mr. Douglas badly. I take into consideration the fact that he has been in custody for 5 years and together with all of the other circumstances as relates to Mr. Ephraim, I am of the view that a sentence of 7 years in prison is appropriate; the sentence is to take effect from today's date.

Henry Weekes

[27] In relation to Mr. Henry Weekes, Learned Counsel Mr. Ralph Francis made a moving plea in mitigation on behalf of Mr. Weekes. Counsel, said that Mr. Weekes regrets the entire incident and, asked the Court to be lenient with its sentence and he referred to the criminal record of Mr. Weekes which reflects that he had two convictions of violence, both of which Mr. Weekes denies. The convictions are not major and the penalties imposed for each offence was that of binding over. Mr. Weekes is 38 years old and is unmarried he is the

father of 3 children ranging in age from 7 to 11. Prior to the incident, he lived at Gray's Farm. Counsel asked the Court to take into consideration the fact that Mr. Weekes has spent 5 years in custody and while the facts presented by the Learned Director of Public Prosecution in relation to Mr. Weekes do not paint a good picture; Counsel nevertheless asked the Court to take into consideration that he has dependents who rely on him and give him an opportunity to make good his life.

[28] I have given careful consideration to the submissions urged upon the Court and have reviewed the totality of circumstances with specific emphasis on those that are pertinent to Mr. Weekes. Indeed, in determining the appropriate sentence I have looked at his culpability, bearing in mind that he was a part of a joint unlawful enterprise. It is noteworthy that he was instrumental in capturing Mr. Douglas at the race course, beating and forcing him into his jeep. He played a very important and I dare say one of the leading roles in the entire incident. He drove his jeep together with the others and the deceased to Kemwah's yard. Of note is the fact that he was in the forefront of beating Mr. Douglas at Kemwah's yard and that this was done in the full glare of onlookers, yet he was not deterred. This was in total disregard for the law. I have no doubt that he was one of the "ring leaders" of the gang that inflicted the "unlawful blows" on Mr. Douglas resulting in his death. As stated earlier, this sort of gang activity seems to be on the rise and the Court must impose a sentence which sends a strong message to the society that it will not be condoned.

[29] In determining the appropriate sentence, I however take into consideration the mitigating factors which include the following: he has pleaded guilty and he is a family man. However, the mitigating factors must be viewed against the seriousness of the offence and the gravity of the offence. In this regard, not only did Mr. Weekes partake in beating Mr. Douglas but he threw the dumbbells on Mr. Douglas' chest while he lay helpless on the ground and he also set the dogs on Mr. Douglas; these are aggravating factors; it is worth repeating that this sort of behaviour cannot be condoned. I cannot overlook that he is very culpable in the entire incident however in my determination of the appropriate sentence to impose on Mr. Weekes, I take into consideration the fact that he has spent 5 years in custody; I am nevertheless of the view that, he is more blameworthy than the others and,

taking the totality of the circumstances into consideration the appropriate sentence to impose on him is 10 years in prison to take effect from today's date.

Everette Crump

[30] I now turn to Mr. Everette Crump. Mr. Ralph Francis, Learned Counsel has asked the Court to temper justice with mercy in relation to Mr. Crump. He is 44 years old, is the father of 3 minor children and is unmarried. While he has previous convictions the ones that relate to violence were committed several years ago and were not of a serious nature. Counsel asked the Court not to take those convictions into consideration but rather to treat them as having been spent. Mr. Crump is a builder by profession and prior to being in custody he sought to contribute to the society; if given an opportunity he will no doubt make a meaningful contribution to the society. Further, Mr. Francis urged the Court to take into account that he was not at the race course at Cassada Gardens and only got involved in the incident at Kemwah's yard; his role in the beating, Counsel said was not as great as the others. Counsel said that the Court should be lenient in sentencing him since he has been in custody for 5 years.

[31] In determining the appropriate sentence to impose on Mr. Crump, I pay regard to his age at the time of the incident. He was a mature man of 40 years old and ought to have known and done better. I also observe that he has a few convictions over several years but I will only take into consideration the three convictions that he has for offences against the person namely those of wounding since I am of the view that they are relevant. I am however prepared on this occasion to give him an opportunity for rehabilitation while he is in custody. I have taken into consideration that he pleaded guilty during the trial of the matter and I give him some discount for so doing. While there is no doubt that he was not present at the race course, I cannot overlook the fact the he partook in the beating of Mr. Douglas while he was under the shed. He also stomped on Mr. Douglas while he was lying helpless under the shed. He had a total disregard for the law and I cannot overlook the significant role he played in the entire incident. I have also taken into account that his Counsel has indicated he is remorseful. Even though he has spent 5 years in custody the incidence of the use of violence can attract nothing less than a custodial penalty if the

Court is to show its disapproval of the practice of taking matters into one's own hand – resulting in death. Other like minded persons must be deterred, as well as Mr. Crump must be punished. In view of the totality of the circumstances, in relation to the Mr. Crump, I am of the view that the appropriate order is that he be sentenced to 7 years in prison to take effect from today's date. This sentence takes into consideration the fact that he has been on remand for 5 years.

[32] The Court acknowledges the assistance of Learned Director of Public Prosecutions and Learned Defence Counsel.

Louise Esther Blenman
High Court Judge