

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

(CRIMINAL)

CRIMINAL CASE NO 0013/2007

BETWEEN

THE QUEEN

Crown

v.

ROY WILLIAMS

Defendant

**Appearances:**

Mr. Anthony Armstrong, Director of Public Prosecutions for the Crown  
Mr. John Fuller and Ms. Nelisa Spencer for the Defendant

.....  
2007: October 3<sup>rd</sup>  
.....

**JUDGMENT ON SENTENCING**

[1] **Blenman, J:** Mr. Roy Williams was indicted by the Learned Director of Public Prosecutions for the offence of murder contrary to common law. He offered a plea of guilty of manslaughter which was not objected to by the DPP. Accordingly, he was acquitted of the offence of murder and consequent upon his plea he was convicted of manslaughter.

**Facts**

[2] On Wednesday 18<sup>th</sup> January 2002, at approximately 7.00 pm, in Athill Street, St John's, Antigua Mr. Jerome Yhap, deceased and Mr. Jerome Destin had an altercation over a stolen bike that Mr. Yhap had allegedly sold to Mr. Destin for \$200.00 EC and which was retrieved from Mr. Destin by its owner. Mr. Destin met the deceased and accosted him, he asked the deceased for a refund of the money that he had paid the deceased as the purchase price and an argument ensued. The deceased did not have the entire purchase

price to refund to Mr. Destin, in fact at the time he had only \$20.00EC. Being dissatisfied in not receiving the entire sum, Mr. Destin struck the deceased and the two men fought. In an effort to get away from Mr. Destin, the deceased ran away with Mr. Destin in pursuit of him. He was able to make good his escape from Mr. Destin and was in the process of jumping on to the back of a pickup motor vehicle in an effort to get away altogether. This was not to be since the traffic was heavy on that night and the pickup was moving slowly. It was at this point that Mr. Roy Williams, the defendant, who was not previously involved in the altercation, ran up to the pickup and said to the deceased "you just want me stab you". Thereupon Mr. Williams inflicted two stab wounds to the back of the deceased's thighs. Mr. Yhap was however able to exit the vehicle in which he was trying to escape and ran for a few yards. He ran into a supermarket and fell to the ground, where he remained while awaiting on the ambulance to arrive. Before receiving medical attention a few minutes later he succumbed to his injuries. He was pronounced dead at 9.08 pm. Dr. Lester Simon, the well known pathologist, performed the post mortem on the deceased on the 25<sup>th</sup> January 2006 and, stated that the cause of death was due to exsanguination due to laceration to the right thigh.

- [3] It was against that background that the defendant pleaded guilty and is before the court for sentencing.

### **Submissions**

- [4] Learned Counsel Mr. John Fuller made a very passionate plea in mitigation on behalf of the defendant. He urged the court to impose a lenient sentence on the defendant who is 22 years old and has no previous convictions. He told the court that the defendant is very remorseful. Counsel also stated that the fact that the defendant has pleaded guilty to having committed the offence of manslaughter is relevant to the court's determination of the appropriate sentence.
- [5] Counsel lamented about the condition in which the defendant lives. Mr. Fuller spoke at length about the straightened circumstances from which the defendant emanates and he indicated that the defendant lives in a depressed area and did not have the guidance of a

father (the latter who has been absent from his life since the defendant was an infant) and that he was left to live with a grandmother, who at the moment is bedridden, senile and is impoverished. These are the difficult realities, in which the defendant finds himself and with no skill or education having left school at 12. Mr. Fuller pleaded with the court to allow Mr. Williams to rise above the difficult environment in which he dwells and to give him an opportunity to be reintegrated into the society. Counsel adverted court's attention to the fact that Mr. Destin, whose story or problem the defendant had taken over, has provided a deposition in the lower court and gave evidence against the defendant. Counsel submitted that the defendant did not intend in stabbing the deceased to cause him any serious harm but unfortunately he severed one of the main arteries in the deceased's thighs. Mr. Fuller pleaded with the court to impose a sentence on the defendant that will allow him to mend his ways and to seek to live a meaningful life while taking into consideration the fact that the defendant has been in custody since January 2006.

#### **The Law**

- [6] Section 5 of the Offences Against the Person Act Cap 300 Laws of Antigua and Barbuda provides that any person who is convicted of manslaughter shall be liable to be imprisoned for no more than thirty five years.

#### **Court's analysis**

- [7] The court, in determining the appropriate sentence to be imposed on the defendant, must apply the relevant legal principles and take into consideration the totality of circumstances including the nature and gravity of the offence coupled with factors that are relevant to the defendant. Further, in determining the appropriate sentence to be imposed on the defendant, I am required to consider both the mitigating and aggravating factors.

- [8] The mitigating factors are as follows:

- (a) The defendant has no previous convictions;
- (b) He has pleaded guilty;
- (c) He is remorseful; and

- (d) He has a grandmother who depends on him for whatever assistance he can provide.

I also take into consideration the difficult environment in which he lives and the straightened circumstances he finds himself in with no skills or education to assist him in improving his lot.

[9] I must also consider the aggravating factors namely:

- (a) A weapon knife was used to inflict the injury;
- (b) The deceased had no dispute with the defendant; it was the defendant who inserted himself in a dispute/altercation that was of no concern to him;
- (c) The defendant was the aggressor in circumstances where the deceased was seeking to escape the attack.

[10] Even though the aggravating factors are serious, in the circumstances of the case at bar they are outweighed by the mitigating factors.

[11] In sentencing an offender, it is well established that the court should give a discount for the fact that the offender has pleaded guilty. A guilty plea coming early in the trial usually attracts a discount of one-third, this is so both in the England and in our jurisdiction. The reason for this is well recognized since among other things it saves the state both time and money. Byron CJ in **Criminal Appeal No. 8, 10, 16, 22, 25 and 26 of 2003 Desmond Baptiste et al v The Queen** stated that "the defendant who has pleaded guilty is entitled to a considerable discount and that the discount should be applied not to the maximum sentence possible under the statute but rather to a notional sentence the sentencer might have given save for the guilty plea".

[12] In the case at bar, when the defendant was arrested he gave a statement to the police under caution and admitted to having the knife with which the deceased sustained the injuries. I will give the defendant credit for his guilty plea at the earliest opportunity in the trial.

[13] In determining whether there should be a custodial sentence the court takes into consideration the fact that the defendant has no previous conviction but that is not the end of the matter. A custodial sentence is essential where there are aggravating factors such as are present and coupled with the fact that the offence to which the defendant has pleaded guilty is a very serious one.

[14] In sentencing the defendant I must also apply the well established sentencing principles enunciated by Lawton LJ in **R v Sergeant Cr. App. Rep. 74 at p 77** namely: retribution, deterrence, prevention and rehabilitation.

#### **Deterrence**

[15] In Antigua and Barbuda there is no denying that there is a prevalence of the offences against the person involving very young persons and in which knives are used to inflict the injury; in some cases, such as the case at bar, the injuries have been fatal. This is of growing concern to all especially the court.

[16] While there is no need to deter the defendant in the absence of any evidence that he has previously committed any offence, I have no doubt that with the seeming upsurge of offences by very young persons in Antigua, in which knives are used, as stated above, the sentence I impose should serve as a general deterrence to other persons who are inclined to commit similar offences.

#### **Prevention**

[17] I am not of the view that the principle of prevention is applicable to the defendant in view of his clean criminal record.

#### **Rehabilitation**

[18] I am concerned at the fact that a young man of 22 years old cannot read or write and seems to have no social skills. It is my hope that while Mr. Williams is in custody he uses the opportunity to at least learn a skill that will enable him to be reintegrated into the society on his release from custody. There is very little that a court of law can do in

ensuring that a person such as the defendant obtains a skill that will enable him to earn a living after his incarceration and so to prevent the real probability of recidivism. Here is a young man of 22 years who cannot read or write having left school at the age of 12 years and who lives with his grandmother (who is senile) and the house in which they reside have no furniture; these circumstances are very grave, to say the least. Perhaps, the time that the defendant will spend in prison will provide him the opportunity to learn a trade which would be of benefit to him and ultimately to the society which will be less likely to be victimized.

### **Punishment**

- [19] As stated earlier, the defendant has committed a serious offence and he must be condemned accordingly. The sentence that I will impose on the defendant takes into consideration that he has been in custody since January 2006. I must send a strong message to the society that the court will not condone this sort of violence.
- [20] A review of the recent decisions of our Court of Appeal indicates that the court has imposed sentences ranging from 5 years to 20 years for the offence of manslaughter.
- [21] In the case at bar, taking into consideration the totality of circumstances, I am of the view that a sentence of 8 years in prison is appropriate. Time spent in custody is to be taken into account.
- [22] The court acknowledges the assistance of the Learned Director of Public Prosecutions and Learned Defence Counsel.

Louise Esther Blenman  
**High Court Judge**