

BRITISH VIRGIN ISLANDS

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

CASE NO. 3 OF 2008

BETWEEN:

THE QUEEN

and

BRIAN WALTERS

Appearances:

Mrs Grace McKenzie, Principal Crown Counsel, Ms Tamia Richards, Senior Crown Counsel and Mr Myron Walwyn, Crown Counsel for the Crown

Dr. Joseph S. Archibald QC, Ms Anthea Smith and Mr Duane Jean Baptiste of J.S. Archibald & Co for the Defendant

2008: May 16, 26

2008: May 27

JUDGMENT ON SENTENCING

(Criminal law – murder – Defendant was “child¹” at date of commission of offence- pleaded not guilty to murder- jury empanelled to try case - convicted by majority verdict of guilty of manslaughter by reason of provocation - sentence – matters to be considered)

Introduction

[1] **HARIPRASHAD-CHARLES J:** Every year, the British Virgin Islands celebrate its Carnival during the beginning of August, in honour of the emancipation of slaves which took place in 1834. The August Festival becomes the islands highlight –spirits of joy, with lots of dances, parties, parades, Queen Shows, Prince and Princess Competition and other events. On Monday, the revelers spill out to the parties into J’Ouvert dancing behind live bands in the early morning and then for the next couple of days they dance merrily to the sweet rendition of music through the streets of Road Town in costumed parades reminiscing “If music be the food of love, play on.” August 2007 was however

¹ See section 2 of the Criminal Justice (Alternative Sentencing) Act, No. 10 of 2005, Virgin Islands.

an exception. An early morning incident involving teenagers sent shock wave across the Territory. The incident was particularly melancholic in that two teenagers were prematurely snatched of their lives. A child, Brian Walters, aged 15 at the time of the incident, was subsequently charged with the murder of 16 year old Akimo Williams, one of the teenagers who died. It was alleged that Akimo murdered Jeremy Wattley, the 19 year old uncle of Brian Walters on that fateful morning.

- [2] Upon his arraignment on 7 April 2008, Brian Walters pleaded not guilty to murder. He was tried for that offence and was convicted by a 7-2 majority verdict for the offence of manslaughter by reason of provocation contrary to section 151 of the Criminal Code 1997 on the 21 day of April, 2008. Sentencing was deferred so that a Social Inquiry Report and a Psychological Report could be made available to the parties and to the Court. On 16 May 2008, the Court heard submissions on sentencing. Further submissions were heard on 26 May 2008 when the Psychologist Report was produced.

The salient facts

- [3] The facts which the Jury must be taken to have accepted can be encapsulated thus. At the J'Ouvert morning festivities on Monday 6 August last year, a series of fight broke out in Road Town. These fights were between a group of youths from Sea Cow's Bay and Huntums Ghut. Both murder victims (Jeremy Wattley and Akimo Williams) and the Defendant, Brian Walters were involved in the fight which took place in the parking lot area on the Waterfront opposite Pusser's Pub. Still photographs taken of the J'Ouvert depicted these three boys and a number of others engaged in a fight.
- [4] After the breakup of this fight, the groups dispersed and Brian Walters and several friends including Jeremy began to make their way in the general direction of Huntums Ghut. As they reached in the area of Vanterpool Enterprises, Brian Walters who was lagging behind his friends, saw a fight and joined in. During that fight which took place between the area of Bolo's Department Store and Bobby's Market Place, Akimo struck

a blow with a piece of 2 x 4 wood to the head of Jeremy who fell to the ground suffering from injuries. Akimo then ran away from the scene in the general direction away from the roundabout. Jeremy died as a result of the injuries sustained from Akimo.

- [5] Brian Walters ran after Akimo. He said that he saw Akimo ran as far as Colombian Emeralds and that he did not assault him nor did he see anyone do so. He stated that he gave up his chase of Akimo when he reached in the area of Clovers store.
- [6] The evidence adduced by the Prosecution showed that Akimo ran no further than Simply Delicious restaurant where he collapsed. He was subsequently picked up and taken to Peebles Hospital by an ambulance. At the hospital, Akimo was taken straight to the operating theatre where he was medically examined and treated by Dr Marcos. After two days, he was flown to Miami for further and better treatment. Akimo died in Miami on or about 14 August 2007. Dr Lew, the pathologist who performed the autopsy said that Akimo died of stab wounds with the fatal one to his neck which severed the carotid artery that takes the blood to the brain. She said that the wounds to the neck and the left leg were consistent with a sharp object, for example, a knife.
- [7] The jury by their verdict, must have found that Brian Walters, after seeing his uncle (someone with whom he had an extremely close relationship) being seriously injured by Akimo became very emotional about it. He gave chase after Akimo, caught up with him by Simply Delicious and inflicted the two wounds on Akimo which resulted in his death.
- [8] When Brian Walters was being investigated for the offence of the murder of Akimo, he gave a tape-recorded interview as well as a written statement to the police which he relied upon at the trial. He categorically denied any involvement in the incident. He was subsequently arrested and charged for the murder of Akimo Williams.

[9] After deliberating for two hours, the jury returned. The verdict was not unanimous. They were thus sent back in to deliberate as they had more time under the law to do so. After four hours of deliberation, they returned with a 7:2 majority verdict of guilty of manslaughter by reason of provocation. Brian Walters is now before the Court for sentencing.

Plea in mitigation

[10] In his emotive plea in mitigation, Learned Queen's Counsel Dr Archibald who appeared for Brian Walters called on the Court to exercise leniency and mercy quoting from Shakespeare's, *The Merchant of Venice* "And earthly power doth show likest God's, When mercy seasons justice." In effect, Dr Archibald resonated the words of A.C. Grayling who had written "we all need mercy ourselves." He implored the Court to give young Brian Walters a chance in life so that he could finish school and become a good person. At Her Majesty's Prison, young Walters continues to do his schoolwork but tangible concerns were raised on the ability of that institution to address the needs of juveniles.

[11] Dr Archibald QC submitted that there is no case in the Eastern Caribbean or perhaps, the wider Caribbean with similar circumstances. He commended the Senior Probation Officer for her fair Social Inquiry Report. A similar shower of praise went to the Prosecutors for expediting this matter which reached the High Court in approximately 5 months.

[12] Learned Queen's Counsel urged the Court not to impose a custodial sentence and in determining a fair and proper sentence, to take into consideration that one of the aims of sentencing is for the sentence to fit the circumstances of the crime and the offender including the likelihood of repetition.

Submissions by the Crown

[13] Learned Principal Crown Counsel, Mrs Grace Henry-McKenzie helpfully furnished written submissions to the Court. She provided a battery of useful cases as sentencing

guidelines as well as the United Kingdom Guidelines. The Sentencing Guidelines Council in the UK issued definitive guidelines which apply to offenders convicted of manslaughter by reason of provocation who are sentenced after 28 November 2005. Of importance is the fact that section 3 of the Homicide Act 1957 in the United Kingdom mirrors verbatim section 151 of the Criminal Code 1997 (Virgin Islands) on manslaughter by provocation.

[14] The Court of Appeal in **Attorney General's References (Nos. 74, 95 and 118 of 2002) (Suratan and others)**² sets out a plethora of assumptions that a judge must make in favour of an offender found not guilty of murder but guilty of manslaughter by reason of provocation. The assumptions are required in order to be faithful to the verdict and should be applied equally in all cases whether conviction follows a trial or whether the Crown has accepted a plea of guilty to manslaughter by reason of provocation:

- first, that the offender had, at the time of the killing, lost self-control; mere loss of temper or jealous rage is not sufficient
- second, that the offender was caused to lose self-control by things said or done, normally by the person killed
- third, that the offender's loss of control was reasonable in all the circumstances, even bearing in mind that people are expected to exercise reasonable control over their emotions and that, as society advances, it ought to call for a higher measure of self-control
- fourth, that the circumstances were such as to make the loss of self-control sufficiently excusable to reduce the gravity of the offence from murder to manslaughter.

[15] Bearing in mind the loss of life caused by manslaughter by reason of provocation, the starting point for sentencing should be a custodial sentence.

Factors the Court should take into consideration

[16] The Court should take the following circumstances into consideration namely:

² [2003] 2 Cr App R (S) 42.

1. The sentences for public protection must be taken into consideration in all cases of manslaughter.
2. The presence of any of the general aggravating factors identified in the Council's Guideline *Overarching Principles: Seriousness* or any of the additional factors identified in this Guideline will indicate a sentence above the normal starting point.
3. This offence will not be an initial charge but will arise following a charge of murder. The Council Guideline *Reduction in Sentence for a Guilty Plea* will need to be applied with this in mind. In particular, consideration will need to be given to the time at which it was indicated that the defendant would plead guilty to manslaughter by reason of provocation.
4. An assessment of the *degree* of the provocation as shown by its nature and duration is the critical factor in the sentencing decision.
5. The intensity, extent and nature of the loss of control must be assessed in the context of the provocation that preceded it.
6. Although there will usually be less culpability when the retaliation to provocation is sudden, it is not always the case that greater culpability will be found where there has been a significant lapse of time between the provocation and the killing.
7. It is for the sentencer to consider the impact on an offender of provocative behaviour that has built up over a period of time.
8. The use of a weapon should not necessarily move a case into another sentencing bracket.
9. Use of a weapon may reflect the imbalance in strength between the offender and the victim and how that weapon came to hand is likely to be far more important than the use of the weapon itself.
10. It will be an aggravating factor where the weapon is brought to the scene in contemplation of use *before* the loss of self-control (which may occur some time before the fatal incident).
11. Post-offence behaviour is relevant to the sentence. It may be an aggravating or mitigating factor. When sentencing, the judge should consider the motivation behind the offender's actions.

[17] The maximum penalty for manslaughter by reason of provocation is life imprisonment. The Sentencing Guidelines Council has put in place three levels of sentencing and the appropriate ranges and starting points for each level.

Low degree of provocation (A low degree of provocation occurring over a short period)

Sentence Range: 10 years – life

Starting Point: 12 years custody

Substantial degree of provocation (A substantial degree of provocation occurring over a short period)

Sentence Range: 4 – 9 years

Starting Point: 8 years custody

High Degree of provocation (A high degree of provocation occurring over a short period)

Sentence Range: if custody is necessary, up to 4 years

Starting Point: 3 years custody

[18] The Crown correctly submitted that the degree of provocation in this case fell within the substantial degree of provocation level. A list of the aggravating and mitigating factors that might be relevant to manslaughter by provocation is set out in pages 6 and 7 respectively of the Council's Guidelines Overarching Principles: Seriousness.

[19] The relevant sentencing case law in the United Kingdom is the case **Attorney General's References (Nos. 74, 95 and 118 of 2002) (Suratan and Others)** [supra] and **Attorney General's Reference No. 33 of 1996 (Latham)**³ which states that an offender who deliberately goes out carrying a knife as a weapon, and uses it to cause death, even if there is provocation, he should expect a sentence in a contested case in the region of 10 to 12 years. Unquestionably, this speaks to an adult offender as opposed to a young person.

[20] **Blackstone's Criminal Practice 2002 ed. at para. B1. 31 at pages 130-140** states that the sentencing bracket for offences of manslaughter committed after provocation has normally been set at a period between 3 and 7 years, although longer sentences have occasionally been upheld. According to Shaw LJ in **Bancroft**⁴ at page 120:

"Notwithstanding that a man's reason might be unseated on the basis that the reasonable man would have found himself out of control, there is still in every

³ [1997] 2 Cr. App. R. (S) 10.

⁴ (1981) 3 Cr. App R.(S) 119.

human being a residual capacity for self-control, which the exigencies of the given situation may call for. That must be the justification for passing a sentence of imprisonment, to recognize that there is still left some degree of culpability”

[21] Lord Lane CJ in the English case of **Taylor**⁵ commented that sentencing in these circumstances is an almost impossible task. But a judge must be mindful of two objects: firstly, the necessity to ensure that the defendant expiates his offence by the imposition of a term of imprisonment and secondly, although to some extent where there is provocation it may seem illogical, it has got to be a lesson to other people that they should keep their tempers and not to be provoked in such circumstances.

Eastern Caribbean Supreme Court Guidelines and Cases on Sentencing

[22] As I said in **The Queen v Trudy Edward**⁶, our Court of Appeal has shown some consistency in the sentencing of accused persons in cases of manslaughter. In cases where provocation or other defences reduce the offence to manslaughter, the benchmark period established is 15 years imprisonment.⁷ The benchmark, to my mind, gives some guidance on sentencing with the intention of achieving some consistency in the approach to sentencing. However, circumstances will differ necessitating a departure from the benchmark: see the Saint Lucian cases of **Frederick Jackson v The Queen**⁸ and **Janice Hamilton v The Queen**⁹. In **Jackson’s** case, he was indicted for murder but a jury convicted him of the offence of manslaughter after provocation. He was sentenced to 15 years imprisonment. In the latter case, Hamilton was indicted for murder but pleaded guilty to manslaughter. She also received a sentence of 15 years imprisonment. They both appealed. The Court of Appeal reduced both sentences to 10 years respectively.

⁵ (1987) 9 Cr. App. R (S) 175.

⁶ High Court Criminal Appeal No. 56 of 2003 [Saint Lucia High Court] (unreported).

⁷ See: (1) Hilary Patrick Tench v The Queen (Crim. App. No. 1 of 1991) [Saint Lucia] (unreported)

(2) James Jn Baptiste v The Queen (Crim. App. No. 10 of 1994) [Saint Lucia] (unreported)

(3) Denis Alphonse v The Queen (Crim. App. No. 1 of 1995) [Saint Lucia] (unreported).

(4) Bertram Abraham v The Queen (Crim. App. No. 12 of 1995) [Saint Vincent & The Grenadines] (unreported).

(5) Sherwin Fahie v The Queen (Crim. App. No. 2 of 2002) [British Virgin Islands] (unreported)

⁸ Criminal Appeal No. 6 of 2001 [unreported].

⁹ Criminal Appeal No. 9 of 2002 [unreported].

[23] In **Trudy Edward**, the defendant was indicted for the offence of murder contrary to section 178 of the Criminal Code of St. Lucia. She stabbed Alicia Demar with a knife whilst on the street and then headed straight to Central Police Station where she reported the incident to a police officer and handed him the knife which she had used to stab the deceased. The defendant pleaded not guilty to murder but guilty to manslaughter. The Crown accepted the plea. She was sentenced to 7 years in prison. At the time of the killing, she was 19 years and in her first trimester of pregnancy. Her second child was born during her incarceration.

[24] In **Kenneth Samuel v The Queen**¹⁰, Barrow JA elucidated the principles of sentencing, their application and the guidelines for sentencing. Thus, a sentence of 25 years on the appellant who readily pleaded guilty to manslaughter, which earned a remission of one third of the sentence and some other mitigating factors impelled the Court of Appeal to reduce that sentence to 7 years imprisonment. In that case, Barrow JA referring to **Trudy Edward** later said:

“The reference to a benchmark underscores the point that the starting point in imposing a sentence is not necessarily or even the maximum penalty. As a matter of reasoning the maximum penalty must be appropriate only for the worst cases....The judge, therefore, erred in premising his sentencing exercise on a starting sentence of life imprisonment. The judge, instead, should have started with a sentence of, say, fifteen years’ imprisonment and applied the remission that he found appropriate of 1/3 for a guilty plea to that figure. The further reductions that the judge found appropriate – for the appellant cooperating with the police, for his remorse, for his very good character and because he had been provoked – should also have been made from the benchmark sentence instead of from a sentence of life imprisonment.”

[25] In **Sherwin Fahie v The Queen**¹¹, the appellant was convicted for the murder of Sheldon Baptiste on 13 October, 2000 and was sentenced to the mandatory term of life imprisonment. He was 19 years old at the time of killing. The appellant appealed against his conviction on two main grounds (the second being relevant). The second ground of appeal was that the Learned Trial Judge failed to refer to, or leave to the jury

¹⁰ Criminal Appeal No. 7 of 2005 [Saint Vincent & the Grenadines] (unreported).

¹¹ BVI Criminal Appeal No. 2 of 2002- British Virgin Islands (unreported).

the verdict of manslaughter, after having given direction on provocation which arose on the evidence, and especially after leading Prosecuting and Defence Counsel had together agreed with the judge's proposal in chambers to direct the jury on the issue of provocation which arose on the evidence and that the judge's directions on manslaughter were inadequate. The conviction for murder was set aside and was substituted by a verdict of manslaughter by provocation. The Court imposed a custodial sentence of 15 years.

[26] In **The Queen v Roy Williams**¹², the defendant was indicted for the murder of Mr Jerome Yhap. He inflicted two stab wounds to the back of the deceased's thighs. The cause of death was exsanguinations due to a laceration on the right thigh. The defendant was 22 years and had no previous convictions. He offered a plea of manslaughter which was not objected by the DPP and was sentenced to 8 years in prison.

[27] One would appreciate that none of these cases is on all fours with the present case. Neither the learned Prosecutor nor the scholarly Dr Archibald QC could have assisted the Court in finding a case similar to the present one. Indeed, there may be none. However, **Trudy Edward** bears some affinity to the present case. Ms Edward was a teenager, aged 19 and pregnant at the time of the incident. Yet, a distinguishing factor is that she was an adult: Brian Walters is a young person, whose age may have affected his responsibility.

[28] Bearing all these factors in mind, the actual sentence imposed will depend upon the existence and evaluation of aggravating and mitigating factors as well as an evaluative process.

Aggravating Factors

[29] The Crown has also identified the aggravating as well as the mitigating factors in this case which are as follows:

¹² High Court Criminal Case No. 13 of 2007- Antigua and Barbuda.

1. The seriousness of the offence.
2. Brian Walters concealed and disposed of evidence.
3. A weapon was used to stab Akimo.
4. Akimo was stabbed three times over his body.
5. Brian Walters was very aggressive throughout the fights that culminated in the death of Akimo.

[30] The mitigating factors identified are as follows:

1. Brian Walters was acting to protect another namely his uncle, Jeremy.
2. He was 15 years of age at the date of the offence and this might have affected his responsibility.
3. He has no previous convictions.

Social Inquiry Report

[31] The Social Inquiry Report was best described by Dr Archibald QC as a fair and unbiased piece of work. I pay tribute to Ms Sheri Griffin, Senior Probation Officer who continues to render her services to the Court and to the Territory with incredible distinction and grace. Her superior officer, Mrs Annie Malone-Frett ought also to be given some praise.

[32] The Report addresses the family history of Brian Walters, his educational and employment history, home and neighbourhood, religion, physical and emotional health and other relevant issues. The common thread running through this Report is that Brian Walters adored his uncle, Jeremy whom he saw as a “father figure” due to the absence of his own father from the home. He also has an endearing relationship with his mother and grandmother. His relationship with his father was a decent one even though the parents do not live together.

[33] At High School, he was not a scholar or an angel. The school reports revealed that Brian Walters was progressively late for school and infrequently, he was involved in minor infractions.

- [34] After successfully passing the High School Entrance Examination, attaining a Grade II, he went to the BVI High School (now Elmore Stoutt High School). In September 2003, he entered that institution and was placed in Form 1 PM. He repeated the said Form in September 2004 as a result of poor academic performance. In 2005, he was promoted to Form 2 LM. A review of his academic transcript shows that Brian Walters's poor academic performance continued in the subsequent Form; the academic year of 2005-2006 grade point average ("GPA") of 1.84 was his lowest recorded. It follows that Brian Walters repeated Form II for the academic year 2006-2007. He was placed in Form 2 MA.
- [35] Brian Walters improved his academic performance for the academic year 2006-2007 and as a result, was promoted to Form III. Commencing September 2007, he was placed in Form 3SS. The class can be characterized as remedial. He has been doing much better in that class. He last attended High School on 8 November 2007, the date of his arrest.
- [36] According to the Social Inquiry Report, young Walters continues to display a positive attitude. He is euphoric because he was acquitted of murder. As he says: "I know I ain't kill anybody". It is unfortunate that he continues to hold such a view despite the jury's fair verdict. In the same breath, he indicated that he is aware that he may likely receive a custodial sentence, having been found guilty of manslaughter. He expressed that he is prepared to serve some "time" but is comforted in knowing that he will not be incarcerated for "life".

Psychiatric Report

- [37] First of all, I am immeasurably grateful to Dr Rubaine and Dr June Samuels for preparing this report at relatively short notice. Brian Walters was seen for two sessions, one of which was used to conduct his psychometric testing. When seen by the doctors, he was co-operative and communicative during the interviews. He maintained eye contact and there was no evidence of hostility or irritability. Overall, Brian Walters does not have any significant mental disorder. He does have some

anxiety which is most likely related to uncertainty about the outcome of the sentencing. However, he is, at the time, using denial as a way of coping with his current situation.

- [38] The Report recommends post-sentencing follow-up counseling to assist with his adjustment to a new situation, especially in the event of a custodial sentence.

Cardinal principles of sentencing

- [39] Perhaps the most difficult and controversial area for a sentencer is fitting the punishment to the crime committed. Analyzing the various relevant legislations, it appears to me that the British Virgin Islands Legislature has not, in any of the legislation affecting the subject crimes, or indeed in any other legislation set out the purpose(s) of sentencing. One therefore has to look to English law for guidance. The classical principles of sentencing could be summed up in four words “retribution, deterrence, prevention and rehabilitation.” In **R. v. Sargeant**¹³, Lawton L.J. said:

“Any judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts of the case to see which of them has the greatest importance in the case with which he is dealing.”

- [40] These principles have also been crystallized by Byron CJ in the Saint Vincent case of **Desmond Baptiste v The Queen**¹⁴ and have since been restated and applied in **Kenneth Samuel v The Queen** [supra] as well as **Stanley Bertie v The Queen**.¹⁵

Section 153 of the Code

- [41] Section 153 (2) of the Criminal Code 1997 stipulates that any person who is convicted of manslaughter is liable to imprisonment for life. Consequently, the maximum sentence this Court can impose for the offence of manslaughter is life imprisonment.

¹³ 60 Cr. App. R. 74.

¹⁴ Criminal Appeal No. 8 of 2003 [Saint Vincent & the Grenadines] (unreported).

¹⁵ High Court Criminal Case No. 4 of 2006 [British Virgin Islands]- Written Judgment on sentencing delivered on 21 February 2006[unreported].

Court's considerations

[42] Punishment is always a matter for the court's discretion having regard to the particular circumstances of the case. Both the Criminal Code, Part II and the Criminal Justice (Alternative Sentencing) Act, No. 10 of 2005 ("CJAS Act") Part I give the court a wide discretion on sentencing and a diverse range of options. The Court, in determining sentencing and in particular, alternative sentencing, must take into account the specific matters stipulated by section 4 of the CJAS Act namely (a) the circumstances of the offence; (b) the injury; (c) the degree to which the defendant has shown remorse for the offence; (d) the deterrent effect any sentence may have on the defendant or other persons (e) the degree in which the defendant has co-operated in the investigation of the offence; (f) the need to ensure that the defendant is adequately punished for the offence; (g) the character, antecedents, age, means and physical or mental condition of the defendant and (h) any other matter that the court considers appropriate.

[43] The offence of manslaughter is a serious one. This is reflected in the penalty it carries. In this case, a life has been lost; and a young one also. A young person is before the court facing a maximum sentence of life imprisonment. Akimo and Brian Walters attended the same school; they played together and they also fought together. In his moving manuscript to this Court, young Walters wrote:

"My lady, my life is in your hands. Most of what I wanted to say has already been said, some in plain words and others in big fancy words and terms. I have been labeled the killer of Akimo Williams, but no-one ever said how I used to help him in school with his schoolwork, and that we used to be friends. Yes, we (Akimo and I) had a fight in school, but we were friends."

[44] Akimo has gone to the Great Beyond. In a letter to the Court on 15 May 2008, his mother, Mrs Cheryl Williams wrote:

"Akimo was 16 and my last child. Since this death, our lives have changed. I have sleepless nights and when I think about him I cry. We missed him dearly. You can't really speak about him to his brother and sisters as they would get sad. They don't want to talk about him because of the hurt. His eldest brother has kept all his clothes and shoes and refuses to part with them."

[45] In my opinion, it is difficult to envisage a more unfortunate case. What occurred on 6 August 2007 can simply be described as a tragedy of errors. Fights ensued amongst youngsters. Jeremy was killed by Akimo and Akimo by Brian Walters. Had Brian Walters not short-circuited the process by being the judge, the jury and the executioner, Akimo would have been sitting in this dock charged with the murder of Jeremy Wattle. As the Learned Prosecutor, Ms Richards said in her opening address:

“...so don't say what goes around, comes around...You have to decide the case based on the evidence and not on your feelings because if you were living by an eye for an eye and a tooth for a tooth, we will all be blind and toothless.”

[46] Young Brian Walters calls upon the Court to be merciful thereby seeking a punishment that is less than what he is really due. In a subsequent letter which Akimo's mother wrote on 21 May 2008, she craves for justice - perhaps to be tempered with mercy.

[47] No doubt, this case cries out loud and clear for the virtues of justice and mercy. Justice is the hallmark of a civilized society. From even the days of Plato and Aristotle, the Golden mean of justice could be located in the concept of fairness. Justice, as fairness, means that people get exactly what they deserve –no more, no less. If they get more, something is excessive; if they get less, something is deficient.

[48] Mercy is also required because we all need mercy. If there is such balance between the two, it has no name –but knowing when to show mercy and when to show strict justice is the key in navigating through the dangers that an excess of either may threaten.

[49] This is the arduous task that is expected of the Court. I have taken into consideration all of the matters pleaded in mitigation of behalf of Brian Walters as well as the Crown's submissions and the voice of a grieving mother even though her son also killed. I have also taken into consideration the concerns of the Social Development Department, Her Majesty's Prison and the Honourable Minister of Education with respect to a proper facility to house young male offenders.

[50] It is my aspiration that this case will provide the impetus for schools to have properly trained counselors so that the future generation of this Territory could be provided with the counseling and guidance they need to face the challenges of a changing world. As Brian Walters himself puts it: "I have one wish and desire that this Territory will unite to help my fellow youths and myself to work out our issues without violence. And not to just send counselors and mentors to schools or homes when incidents already occur."

Lack of proper facility to house young offenders

[51] The impending incarceration of Brian Walters has raised concerns from various government departments in the Territory as to the unsuitability of Her Majesty's Prison at Balsam's Ghut to house young offenders. To begin, there is no facility to house young offenders although there has been an increase in violent crimes by them. In his report, the Acting Superintendent of Prison, Mr Kenton Callwood stated that "although this trend (rise in young offenders) has continued for the past few years, nothing has been done in the form of creating a proper juvenile facility. Housing juveniles in an adult prison subjects them to unspeakable atrocities and return them to society as hardened criminals. Housing juveniles and adult prisoners together is self-destructive and self-defeating."

[52] The Social Inquiry Report also highlighted the inability of Her Majesty's Prison to address the needs of young persons and to provide a holistic rehabilitative program to cater to their needs. These concerns have been emphasized in a letter by the Honourable Minister of Education and Culture, who is responsible for Her Majesty's Prison. As can be gleaned from the letter of the Honourable Minister, the Ministry has already begun the process of furnishing the necessary facilities and resources to address the immediate needs of the imprisonment of this minor. That is indeed commendable.

[53] However, there are a number of immediate concerns by the Prison authorities namely:

- a) The lack of facilities to conduct visits with lawyers and/or family.
- b) The lack of facilities to provide recreational activities and equipment;
- c) The lack of facilities to provide educational instruction;

- d) The lack of medical facilities and
- e) A qualified teacher to provide the aforementioned.

[54] As the Acting Superintendent correctly pointed out, there is no benefit to both the individual and community when a juvenile is put in an adult prison facility. He concluded that Her Majesty's Prison is ill-prepared to deal with a long term juvenile inmate who for the most part will be isolated. Major changes will have to be made in order to meet the minimum standards required for dealing with juvenile inmates.

[55] Such strong words coming from the custodian of this youngster should not fall on deaf ears. It is hoped that this case heralds the dawn of a new day when the Government of this Territory would move quickly to provide a proper facility to house its young people who have breached the law. Although a new section for juveniles has been created in the new Female Section of the Prison, the needs of Brian Walters cannot be met. In addition, juveniles in adult facilities are extremely vulnerable from not only adult inmates, but also from abuses from untrained staff.

[56] I must confess that I am encouraged by the letter of the Honourable Minister that this issue of the imminent incarceration is being given paramount priority and that the Ministry has already begun the process of furnishing the necessary facilities and resources to address his immediate needs. There is an old maxim that the remission of moral debts may embolden sin, but may also embolden virtue by giving people a second chance.

The sentence

[57] In determining a fair sentence, I bear in mind the four classical principles of retribution, deterrence, prevention and rehabilitation. I also bear in mind that in sentencing a young offender, the court should not impose a sentence which, the far end of it, would to young men...seem completely out of sight....The court must take care to select a duration for the order upon which the offender can fix his eye."¹⁶

¹⁶ See R v Conway, 7Cr. App R. (S) 303.

[58] In **R v Ford and others**¹⁷, it was said that a sentence under section 53(2) (now subsection 3) of the Criminal Justice Act, 1991[UK] could be passed as one of general deterrence, if the court was confronted with circumstances of such gravity that a general deterrent was necessary. Such a sentence must not be excessive but must be commensurate with the seriousness of the offence. Unquestionably, there is an upsurge in violent crimes among youths in the Territory. This case is a perfect example. Society has shown its abhorrence for criminal activities amongst young people. It is the duty of the Court in such circumstances to send out a strong signal that criminality among youths will not be tolerated.

[59] This case has taught us all another lesson: it is time that parents take control of their young children. Parents grieved profoundly when their loved ones are tragically killed or when they have to face criminal prosecutions but had these youngsters been better supervised, this incident might have been avoided.

[60] In the final analysis, having regard to all the facts and circumstances, I hereby sentence you, BRIAN WALTERS to six (6) years imprisonment; time to run from the date of your incarceration as a remand prisoner; that is: 9 November 2007.

[61] During his incarceration, Brian Walters is to receive follow-up counseling. The relevant authorities should forthwith consult with the Senior Psychiatrist, Dr June Samuels so that counseling is done as ordered by the medical expert. The Ministry of Education should also do all that is necessary to assist him with the continuation of his studies at High School.

Indra Hariprashad-Charles
High Court Judge

¹⁷ 62 Cr. App R 303, CA.