

BRITISH VIRGIN ISLANDS

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

CASE NO. 18 OF 2007

BETWEEN:

THE QUEEN

and

ANDREW MILTON
DENNIS CAMPBELL
GEORGE O'CONNOR

Appearances:

Mr. Terrence F. Williams, Director of Public Prosecutions. With him Ms. Tiffany Scatliffe, Senior Crown Counsel and Mr. Valston Graham, Crown Counsel for the Crown
Mr. Mario Merritt for the Defendant, George O'Connor

2009: October 05, November 19
2009: November 23, 26

JUDGMENT ON SENTENCING

(Criminal Law – Conspiracy to murder – section 156 of the Criminal Code, 1997 – powers of the court - aggravating and mitigating factors - principles of sentencing)

Introduction

[1] **HARIPRASHAD-CHARLES J:** On 5th October 2009, the defendant, George O'Connor along with two other defendants, Andrew Milton and Dennis Campbell were convicted by a unanimous jury of conspiracy to murder Kerriann Ebanks pursuant to section 156 of the Criminal Code, 1997. This judgment does not concern Milton and Campbell as they have already been sentenced. A sentencing hearing for Mr. O'Connor was held on 19th November 2009. He is now before me for sentencing.

The facts

- [2] The facts of the case have been elaborated in a judgment of this Court delivered on 23rd November 2009¹. As such, I do not think it is necessary to rehearse those facts in this judgment. In so far as Mr. O'Connor's role in this conspiracy is concerned, the facts, which the jury must have accepted are that in the evening of Saturday, 30th September, 2006, Hubert McLeod drove O'Connor, Milton and Christopher "Gogo" Bailey to the Terrence Lettsome Airport to collect Campbell who was coming in from Jamaica. Immigration Officer, Walter Maduro processed Campbell and O'Connor came and collected him.
- [3] On Tuesday 3rd October, 2006, McLeod transported Campbell and Milton to Boxer's house at Baughers Bay where they met Mr. O'Connor. During the course of a conversation, Milton lamented that his sister brought immigration for him. Mr. O'Connor asked Milton what he would do. Milton replied that *"he going kill his sister and one of them police boy"*. Then Milton asked Mr. O'Connor for the glove and Mr. O'Connor said that the glove is at his house in town. McLeod then drove Campbell and Milton to Mr. O'Connor's house in town where Milton went and recovered the glove.
- [4] In a nutshell, the case for the Crown against Mr. O'Connor is that he was the local facilitator who knew of the plan to murder Kerrian and he facilitated its commission by going to the airport, collecting Campbell and providing the glove.

Plea in mitigation

- [5] Mr. Merritt, appearing as Counsel for Mr. O'Connor made his submissions by way of live-video link from Trinidad & Tobago. He urged the court to exercise mercy and leniency on Mr. O'Connor as his role in the conspiracy was a minor one as compared to the other defendants who played more substantial roles. Perhaps, I should pause here to state that the law is that where criminal conspiracies are formed, it may well happen that one or more of the conspirators is more deeply involved in and has a greater knowledge of the overall plan than the others. However, the fact that he is in it (which the jury must have found), it does not matter precisely where his involvement appears on the scale of seriousness or precisely when he

¹ See Criminal Case No. 18 of 2007. Written Judgment delivered on 23rd November 2009.

became involved, he is guilty as charged. Mr. O'Connor could have dropped out of it before the crime had been fully carried out. But, he remained in it.

[6] I now turn to the other mitigating factors. Learned Counsel implored to court to look at the fact that Mr. O'Connor, aged 23, had never had a positive male influence in his life as his own father introduce him to the use of marijuana at the tender age of nine (9) and he actually witnessed his father consuming the drug on a daily basis. In addition, when he relocated to the BVI in 2000 to live with his mother and step-father, he never bonded with his step-father who showed no affection to him. Eventually, he moved out of the house that his mother and step-father shared.

[7] Mr. Merritt also implored the court to take into consideration Mr. O'Connor's medical conditions. According to the medical report dated 22nd October 2009, Dr. Odebajo stated that Mr. O'Connor receives treatments for ailments which include upper respiratory tract infection, minor trauma and peptic ulcer disease. Whilst in prison, he was diagnosed with Diabetes Mellitus, a chronic illness which makes him insulin dependent. He has since then been receiving treatment for the Diabetes Mellitus. According to Dr. Odebajo, Mr. O'Connor needs to manage the Diabetes Mellitus by life-style modification, dietary management and pharmacological management.

[8] Presently, Mr. O'Connor is on injectable insulin (Novolin 70/30). He takes 20 units of insulin subcutaneously every day: 10 units in the morning and 10 units in the evening. Since being on remand on 10th October 2006, he was admitted to Peebles Hospital on two (2) occasions. The first was when he had Hypoglycemic Coma and then for Epididymo-orchitis. He was treated and discharged. His medical condition is described as "stable."

[9] Although Mr. O'Connor has had previous convictions, Mr. Merritt urged that the court should not take them into account because they are minor and not of a similar nature. The record reveals that Mr. O'Connor has been before the Magistrate Court on five prior occasions since May 2004. On four of those occasions, he was sentenced for possession of cannabis and on one occasion, he was sentenced to a term of imprisonment.

Pre-sentence Report

- [10] A pre-sentence report was requested from the Social Development Department. The report is comprehensive and I am grateful to that department for their unrelenting support. The report reveals that Mr. O'Connor was last employed prior to his incarceration in 2007, on a construction site of Dr. Hubert O'Neal situated in Butu Mountain. He worked in various menial capacities such as labourer, handyman and deck hand.
- [11] With respect to his educational background, Mr. O'Connor attended the Hayes All Age School in Clarendon, Jamaica. His progress in this school system was measured according to his chronological age and so he never repeated any class. He then went to Penwood High School, also in Jamaica. His academic performance was characterized as "good" and there were never any reports about Mr. O'Connor exhibiting "bad behavior". He remained at Penwood High School until 2000 when he relocated to the BVI. He was in Form II. He never completed his secondary education.

Conspiracy to murder

- [12] Mr. O'Connor along with Milton and Campbell were convicted by a unanimous jury of conspiracy to murder Kerriann between 30th September 2006 and 3rd October 2006. Milton and Campbell have been sentenced to 10 years imprisonment for this offence which will run concurrently with the other sentences they are serving.
- [13] Section 156 of the Criminal Code, 1997 provides:
- "Any person who conspires with any other person or solicits, encourages, persuades, endeavors to persuade, or proposes to any other person, to murder any person, whether such person is within the Territory or elsewhere, commits an offence and is liable on conviction to imprisonment for a term not exceeding fourteen years."
- [14] In England, conspiracy to murder carries a maximum sentence of life imprisonment². The maximum sentence which our court can impose is 14 years. However, the court has a wide discretion in sentencing both at common law and under the laws of this Territory³ to enable it to do justice having regard to the particular facts of each case.

² See s. 3(2) of the Criminal Justice Act, 1977.

³ See sections 22 and 23 of the Criminal Code, 1997.

[15] There is a dearth of case law on conspiracy to murder in our jurisdiction so I turn to English law for guidance. The case of **R v Barot**⁴ concerns an appeal concerning a failed terrorist plan which was thwarted by security officials. In this case, the Court of Appeal set down some guidance with respect to conspiracy to commit murder. The Court advised that the facts of each case determine what is a suitable sentence, but it must also be borne in mind the following:

1. Seriousness of the offence,
2. Detail of planning involved,
3. Whether the conspiracy would have been put into practice.

[16] Conspiracy to murder is a very serious offence and as such, calls for an immediate custodial sentence. However, the decision as to the length of such sentence is heavily dependent on the aggravating and mitigating features and, usually to a lesser extent, the personal circumstances of the offender.

[17] In the present case, the conspiracy to kill Kerriann was put into effect and sadly, it resulted in the death of Dorcas Elizabeth Rhule also known as Louise. The other aggravating factors are (1) the seriousness of the offence and (2) the detailed planning that was involved.

[18] The most significant mitigating circumstances are Mr. O'Connor's health and the assistance that he has been giving to the Prison Authorities since he has been remanded there. The Superintendent of Prisons wrote a letter on behalf of Mr. O'Connor commending him for his prompt response after discovering that another inmate had attempted to commit suicide by cutting his right wrist with a disposable razor. Superintendent McMaster opined that by alerting the officers at the prison, they were able to avoid disaster.

[19] I also bear in mind the main objectives of criminal sanction: retribution, deterrence, prevention and rehabilitation. Mr. O'Connor has committed an extremely grave offence and he needs to be punished accordingly. A strong message also has to be sent out that crime has no place in this Territory and those who commit crimes will receive the full brunt of the law.

⁴ [2007] EWCA Crim. 1119.

The sentence

[20] Taking all matters into consideration, the sentence of this court is that you, GEORGE O'CONNOR are sentenced to 6 years imprisonment. The sentence will commence from 5th October 2009.

Indra Hariprashad-Charles
High Court Judge