BRITISH VIRGIN ISLANDS

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

Criminal Case No. 7 of 2009

BETWEEN:

THE QUEEN

-v-

KEON EDWARDS

Appearances:

Mrs. Elizabeth Hinds, Director of Public Prosecutions and with her Ms. Christilyn Benjamin, Senior Crown Counsel for the Crown:
Mr. Stephen Daniels of V.E. Malone & Co. for the Defendant

2011: April 01
2011; April 04, 07

JUDGMENT ON SENTENCING

(Criminal Law – Murder – Defendant pleaded not guilty to murder but guilty to manslaughter – Plea acceptable to Crown – Deceased was security guard at nightclub – peace-maker on night in question when he was shot – senseless murder

Sentencing – manslaughter by reason of provocation - maximum penalty of life imprisonment – UK Sentencing Guidelines – Eastern Caribbean Supreme Court Sentencing Guidelines – Benchmark of 15 years – Benchmark not to be slavishly followed –Aggravating factors far outweigh mitigating factors - Case necessitates departure from benchmark)

Introduction

[1] **HARIPRASHAD-CHARLES J:** On 21 February 2011, the Defendant, Keon Edwards, was arraigned on an indictment filed by the Director of Public Prosecutions for murder. Upon his arraignment, Mr. Edwards pleaded not guilty for murder but guilty to manslaughter. The plea for manslaughter was accepted by the Director of Public Prosecutions on the basis that provocation was a live issue in this case.

[2] A sentencing hearing was adjourned to 28 February 2011 to facilitate the production of a Social Inquiry Report. The sentencing hearing was further adjourned to 1 April 2011. At the time of sentencing, the report was still not available. However, learned Counsel Mr. Daniels, who appeared for Mr. Edwards, said that he was in a position to make oral submissions and consequently, such report was no longer necessary.

The facts in outline

[3] The facts of the case as summarized by learned Senior Crown Counsel, Ms. Benjamin were not in dispute.

[4] In 2009, the Diplomat Night Club had a strict dress code for Saturday nights. Patrons were not admitted if they were dressed in T Shirts. The requirements for entry were listed on a notice attached to the building in the vicinity of the entrance to the Club.

[5] Mr. Monroe Thomas Jr. ("the deceased") was, at the time of his death, about 29 years old. He had been living with his mother, Mrs. Lavern Thomas. He was her main financial support and friend.[1] He had been working as a Security Guard at the Administration Complex Building and as a part time worker at the Club.

[6] In the early hours of Sunday, 1 March 2009 around 2:30 – 3:00 a.m., Mr. Edwards visited the Club seeking admittance. At the time, he was dressed in a T Shirt. Shortly before his arrival at the Club, he had left another night club where he had been partying with his girlfriend and her friends. He had just turned 32 and was still celebrating that birthday.

[7] One of the guards at the entrance of the Club, Mr. Phillip Pierre, reminded Mr. Edwards of the dress code of the Club on a Saturday night. Mr. Pierre told him that he could not enter the Club as he was not appropriately dressed. Mr. Edwards insisted on entering as he considered himself a regular at the said Club. Mr. Pierre offered to ask the owner if he would make an exception for Mr. Edwards since it was his birth night [28th February]. Mr. Pierre then asked someone to relay the message to the owner, Mr. Keith Gumbs.

[1] See Witness Statement of Laverne Thomas, Tab 22 of the Crown's Sentencing Guidelines.

[8] Instead of waiting at the entrance for an answer from Mr. Gumbs, Mr. Edwards by-passed the security guards and went upstairs into the Club. Mr. Jonathan Rowthan, the other security guard at the entrance, immediately went after Mr. Edwards. Mr. Rowthan told Mr. Edwards that he could not be in the Club dressed as he was. Mr. Edwards ignored him and went to the bar and asked for Mr. Gumbs.

[9] Mr. Rowthan placed his hand on Mr. Edwards (Mr. Rowthan claimed that he touched Mr. Edwards. Mr. Edwards claimed Mr. Rowthan pushed him) and told him that he could not stay there. Mr. Edwards then turned and punched Mr. Rowthan in his left eye. Mr. Rowthan immediately returned a punch to Mr. Edwards' face [both Mr. Edwards and Mr. Rowthan were seen bleeding]. Persons nearby had to separate them as they became locked in a struggle. Various persons attempted to 'cool down' Mr. Edwards. He remained angry and was escorted out of the Club.

[10] Whilst Mr. Edwards was being escorted out of the Club, he retorted "*this na done so tonight*". He then left the premises. About 5 minutes later, Mr. Edwards returned to the Club dressed in a plaid shirt which complied with the Club's dress code for entry. He walked towards Mr. Rowthan in an aggressive manner and threw a fist at him but he missed. Mr. Rowthan threw a foot after Mr. Edwards. He also missed. Mr. Pierre, the other guard, went between them. Persons around held on to Mr. Rowthan while the other guard, Mr. Edwards' friend and his girlfriend held on to Mr. Edwards.

[11] Around that time, Mr. Gumbs came downstairs. Mr. Edwards told Mr. Gumbs that all he wanted to do was talk to him. Mr. Gumbs told him that he was a regular at the Club but since he had been fighting, he would be denied entry for the rest of the night. This infuriated Mr. Edwards. He insisted on going back into the Club. He and Mr. Gumbs exchanged heated words. At one stage, Mr. Gumbs told Mr. Edwards not to come in front of his door and he walked up to Mr. Gumbs and said "*if you are a bad man, hit me, hit me.*"

[12] In the same area where Mr. Gumbs was standing, were the deceased, Mr. Rowthan and one, Mr. Greenaway. During the incident, the deceased had been actively engaged in the role of peace making. He did not do or say anything to provoke Mr. Edwards.

[13] There were persons holding on to Mr. Edwards and were trying to pacify him. Suddenly, Mr. Edwards lifted up his shirt and pulled out a gun from his waist. Mr. Pierre, on seeing Mr. Edwards' right hand go towards the gun, quickly went and took cover behind a nearby tree.

[14] Mr. Edwards then fired two rounds. The second was the fatal shot which struck the deceased. [From the video recording of the incident, Mr. Edwards fired the first round into the air and he lowered his hand when he fired the second round which hit the deceased]. A person exclaimed "*O God, Keon kill him now.*" Someone else shouted that somebody got hit. Mr. Edwards walked away and while doing so, he discharged two more rounds. Mr. Edwards said he discharged three rounds on the fateful morning in question.

[15] The deceased was seen bleeding from his neck. His blood was gushing out as if a pipe had been turned on. He collapsed and died right there at the Club.

[16] Three spent shells and one lead fragment were recovered at the scene. The post mortem examination revealed that the deceased received a gunshot wound to the left cheek which exited his neck on the right lacerating his external carotid artery. He quickly lost a lethal amount of blood due to the gunshot wound injury. The cause of death was exsanguinations due to gunshot wound of the head.

[17] Mr. Edwards left the scene. He fled the Territory. The police could not find him for seven months. However, excellent police surveillance led to Mr. Edwards' arrest in St. Thomas, U.S.V.I. He was eventually brought back to the Territory in October 2009.

[18] The illegal firearm used during the shooting was never recovered. In his plea in mitigation, when questioned by the court, he stated that he dumped the firearm into the sea when he fled for St. Thomas. But, even up to this moment, he has offered no explanation how he came to be in possession of an illegal firearm. In addition, he gave no reason why he was armed on the night in question, when supposedly, he was going to the Club to have a good time.

Plea in mitigation

[19] As is customary in our courts particularly in cases as tragic as this one, the role of defence Counsel is significantly reduced to begging the court to temper justice with mercy. Mr. Daniels did not deviate from that role. In fact, he did so remarkably. Learned Counsel submitted that the actions of Mr. Edwards cannot be justified. Learned Counsel further stated that Mr. Edwards had consumed Hennessy and cranberry before arriving at the Club. He beseeched the Court to have mercy on Mr. Edwards particularly as he has two young children to maintain.

[20] Mr. Edwards also spoke. He appears remorseful. Reading from a prepared speech, Mr. Edwards said:

> "Mr. Thomas' life was short-lived and I am sorry for what I have done to the Thomas' family and also my family as well. I have caused pain and suffering to these families. I have made a great mistake and I am prepared to deal with the consequences. I am very sorry, Mrs. Thomas."

[21] He further stated that the wounds are still fresh and he hopes that everyone will find it in their hearts to forgive him.

Impact on victim's family

[22] Two years have passed since that sad day. In her victim impact statement taken on 18 February 2011, the mother of the deceased, Laverne Thomas shared her pain with us. She wrote:

> "Since "Junie" was taken suddenly from me, it has affected me all ways, financially and emotionally...I know as human beings we have to die sometime but I would have rather lose him by either disease or old age. At least, I would have [sic] him a longer time to keep him company and he keeps me company. But when someone takes a gun and kills your son who was in no problems with anyone. As I was told, he was just outside looking on and was basically a peace maker in the whole situation telling everyone to calm down and to receive such a death as a reward for being a good up standing [sic] citizen. Words cannot express how I feel. God alone knows the tears I share for my son.... Mothers are not supposed to bury their sons...I believe in justice and I think justice has to go both ways, although whatever sentence that is imposed on the accused cannot bring back my son but at least it should be enough to give me some hope in this legal system...."

[23] Briefly put, Ms Thomas seeks justice to help her to cope with her pain and unhappiness.

Submissions by the Crown

[24] Learned Senior Crown Counsel, Ms Benjamin helpfully furnished written submissions to the Court. She provided a battery of useful judicial authorities and sentencing guidelines of our regional court as well as the United Kingdom Guidelines.

[25] 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.

[26] 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:

(a) That the offender had, at the time of the killing, lost self-control; mere loss of temper or jealous rage is not sufficient

(b) That the offender was caused to lose self-control by things said or done, normally by the person killed

(c) 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

(d) 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.

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

[2] [2003] 2 Cr App R (S) 42.

Factors to be considered

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

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.

[29] 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

[30] In my opinion, the Crown has correctly submitted that the degree of provocation in this case fell within a low degree of provocation with a starting point of 12 years. 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.

Eastern Caribbean Supreme Court Guidelines and Cases on Sentencing

[31] Our Court of Appeal has approved a benchmark period of 15 years in the sentencing of accused persons in cases of manslaughter due to extenuating circumstances such as provocation. See: **Hilary Patrick Tench v. The Queen**,[3] **James Jn Baptiste v. The Queen**,[4] **Denis Alphonse v. The Queen**,[5] **Bertram Abraham v. The Queen**[6] and **Sherwin Fahie v. The Queen**.[7]

[32] In **Kenneth Samuel v The Queen**[8], Barrow JA, having crystallized the principles of sentencing, their application and the guidelines for sentencing, stated at para. 20:

> "The reference to a benchmark underscores the point that the starting point in imposing a sentence is not necessarily or even usually the maximum penalty. As a matter of

[3] Criminal Appeal No. 1 of 1991 [Saint Lucia] (unreported).
[4] Criminal Appeal No. 10 of 1994 [Saint Lucia] (unreported).
[5] Criminal Appeal No. 1 of 1995 [Saint Lucia] (unreported).
[6] Criminal Appeal No. 12 of 1995 [Saint Vincent & The Grenadines] (unreported).
[7] Criminal Appeal No. 2 of 2002 [British Virgin Islands] (unreported).
[8] Criminal Appeal No. 7 of 2005 [Saint Vincent & the Grenadines] (unreported).

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."

[33] The benchmark is intended to give some guidance on sentencing with the intention of achieving some consistency and in the approach to sentencing. In **Murdock v R**[9], the Court of Appeal of North Ireland noted:

> "Guidelines are of use in maintaining a degree of consistency in sentencing, **but they are not to be slavishly followed, since the sentencer in any given case has to determine what is appropriate for the individual case before the court** [emphasis added]. Mitigating and aggravating factors in the particular case will have to be taken into account in determining the final disposition. Reported previous decisions may provide a benchmark, but it should be observed that in some reported cases there may be unstated factors, e.g. co-operation with the police, which have influenced the length of sentence. It should also be borne in mind that levels of sentence may move upwards, or downwards, depending on the prevalence and danger to the public of any type of offence.

[34] As recent as December last year, our Court of Appeal reminded judges of the role of sentencing guidelines. In **Roger Naitram et al v The Queen**,[10] Baptiste JA said [at paragraph 17]:

> "As indicated earlier, the learned judge stated that there was no legal basis for departing from the guidelines laid down by the Court of Appeal. This brings into focus the role of sentencing guidelines. In that regard I turn to the case of *Millberry v R [2002] EWCA Crim. 2891* where the Lord Chief Justice stated at paragraph 34:
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> > "Before concluding our general guidance with regard to sentencing on rape and turning to the cases of the individual appellants, we would emphasise that guidelines such as we have set out above can produce sentences which are inappropriately high or inappropriately low if sentencers adopt a mechanistic approach to the guidelines. It is essential that, having taken the guidelines into account, sentencers stand back and look at the circumstances as a whole and impose the sentence which is appropriate having regard to all the circumstances... Guideline judgments are intended to assist the judge arrive at the correct

[9] Murdock, R v [2003] NICA 21.
[10] HCRAP 2006/005, HCRAP 2006/006 and HCRAP2006/008 – In the Court of Appeal, Antigua and Barbuda – written judgment delivered on 15 December 2010 [unreported].

sentence. They do not purport to identify the correct sentence. Doing so is the task of the trial judge."

[35] The Court of Appeal held that this was an appropriate case for the trial judge to depart from the starting point identified in the guidelines. The Court continued: [at paragraph 17]

> "Sentencing guidelines should not be applied mechanistically because a mechanistic approach can result in sentences which are unjust. Having taken the guidelines into account, the sentencing judge is enjoined to look at the circumstances of the individual case, particularly the aggravating and mitigating factors that may be present and impose the sentence which is appropriate. **It follows therefore that a sentencing judge can depart from the guidelines if adherence would result in an unjust sentence** [emphasis added].The existence of a particularly powerful personal mitigation or very strong aggravating factors may be a good reason to depart from the guidelines. Clearly the suggested starting points contained in sentencing guidelines are not immutable or rigid. Where the particular circumstances of a case may dictate deviating from the guidelines, it would be instructive for the sentencing judge to furnish reasons for so departing."

[36] Essentially, guidelines are not intended to be slavishly followed since they do not lay down the correct sentence. Clearly, the suggested starting points or benchmark in sentencing guidelines are not immutable or rigid. The facts and circumstances of cases differ. That may result in the benchmark being scaled down or scaled up. Our courts have scaled down the benchmark in the cases of **The Queen v Trudy Edward,**[11] **Frederick Jackson v. The Queen,**[12] **Leon Queeley v. The Queen,**[13] **Bassano Hendricks v. The Queen,**[14] **Sherfield Bowen v The Queen,**[15]**Janice Hamilton Jones v. The Queen,**[16] **Brian Walters v The Queen**[17] and **Shonovia Thomas v The Queen.**[18]

[37] **Ronald Gederon v The Queen**[19] and **Edward Toussaint v The Queen**[20] are cases where the benchmark has been scaled up. In **Toussaint**, the appellant killed his wife. He struck her on her

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[11] Case No. 56 of 2003 [Saint Lucia] –judgment on sentencing delivered on 7 April 2004 [unreported].
[12] Criminal Appeal No. 6 of 2001 [unreported].
[13] Criminal Appeal No. 15 of 2001 [British Virgin Islands] (unreported).
[14] Criminal Appeal No. 1 of 1996 [British Virgin Islands] (unreported).
[15] Criminal Appeal No. 4 of 2005 [Antigua & Barbuda] (unreported).
[16] Criminal Appeal No. 9 of 2002 [unreported].
[17] BVI Criminal Case No. 3 of 2008 –judgment on sentencing delivered on 27 May 2008 [unreported].
[18] BVI Criminal Case No. 7 of 2009 –judgment on sentencing delivered on 14 July 2010 [unreported].
[19] Criminal Appeal No. 14 of 1995 [Antigua & Barbuda] (unreported). His sentence of death was substituted for a verdict of guilty of manslaughter and a sentence of 25 years was imposed. He murdered his girlfriend.

head with a piece of wood. She fell down. He gave her three more lashes. He then put her in his car and took her to the beach and buried her. He was convicted of murder and sentenced to death. He confessed to the police but raised the defence of provocation at his trial. He also led evidence in an effort to establish possible insanity and/or diminished responsibility. The offence was committed on 16 May 1999. At his trial, he led evidence to demonstrate that as of 2 October 1998 he was diagnosed with and treated for a problem of anxiety and depression. He was placed under the care of the hospital psychiatrist who saw him in June 2000. She found that he was on medication for manic depression but that he showed no signs of mental illness. The evidence also revealed that the appellant, whilst in prison awaiting trial was treated with Cogentin, Zestin, Haldol and Lithium. The latter two are anti- psychotic drugs.

[38] The evidence before the jury on this issue was that shortly before and shortly after the incident, the appellant was being treated with drugs that were prescribed for the ailment of manic depression. The Court of Appeal held that there was a miscarriage of justice occasioned by the trial judge's inadequate assistance to the jury on the issue of diminished responsibility and had they been given the assistance, they could have properly found the plea of diminished responsibility and returned a verdict of manslaughter. The appeal was allowed. The conviction of murder and the sentence of death were quashed. A conviction of the offence of manslaughter was substituted therefor. Given the cruel circumstances of the killing, the sentence was 25 years.

[39] In order to determine the appropriate sentence to be imposed, an evaluation of the aggravating factors as well as the mitigating factors needs to be considered.

Aggravating and mitigating factors

[40] The Crown identified the following as the aggravating factors:

1. The seriousness of the offence.
2. Mr. Edwards was armed with a firearm which he brought into the Club.
3. Use of a firearm in a public place where many patrons were present.

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[20] Criminal Appeal No. 5 of 2000 (Antigua & Barbuda) CA [unreported].

4. The prevalence of firearms offences in the Territory (this is a cause of societal concern).

5. Mr. Edwards was in possession of an illegal firearm.

6. About four shots were fired in public (both inside and outside the Club).

7. The use of the firearm resulted in the death of an innocent bystander. The deceased did not say or do anything to provoke Mr. Edwards. In fact, the deceased was the peacemaker.

8. There is evidence that a fight ensued upstairs the Club between Mr. Edwards and Mr. Rowthan. The fight was parted and Mr. Edwards, instead of not returning to the Club, came back and further attacked Mr. Rowthan by swinging a fist at him. He had to be pulled away. At one point, he pulled away from those who were holding him back. He then took out the gun from his waist and the fatal shot was fired, amongst other shots. When Mr. Edwards left the Club after the first fight, he had time to regain his self-control or even leave the area.

9. Post-offence behavior:

    a. Mr. Edwards left the scene. He showed no remorse for his actions although patrons were shouting that someone was injured;

    b. He fled the Territory;

    c. Excellent police intelligence led to Mr. Edwards' arrest after nearly 7 months in hiding;

    d. The firearm used was never recovered. Mr. Edwards said that on his way to St. Thomas, he dumped the firearm in the sea. Although there is no evidence to contradict what he told the Court, his story appears incredulous.

[41] The Crown submitted that there are two mitigating factors, namely: (1) Mr. Edwards' plea of guilty and (2) he has no relevant convictions. I also believe that Mr. Edwards is remorseful about what he did. He has now come to grapple with the fact that what he did could have been avoided. He knows that he has to pay for the consequences of such a senseless act.

Penalty for manslaughter

[42] Section 153(2) of the Criminal Code 1997 stipulates that any person who is convicted of manslaughter is liable to imprisonment for life. Although fixed by statute, such sentence represents the upper limit and it is judicially accepted that the upper limits are reserved for the worst of the worst cases. Consequently, in an appropriate case, a sentencing judge may depart from fixed sentences and follow, although not slavishly, guidelines set by superior courts.

Court's considerations

[43] Punishment is always a matter for the court's discretion having regard to the particular circumstances of the case. When sentencing, the court must have regard to the four classical principles of sentencing which could be summed up in four words "retribution, deterrence, prevention and rehabilitation:" see. **R. v. Sargeant**. [21]

[44] These principles have been re-stated and adopted in **Desmond Baptiste v The Queen**[22] and later in **Kenneth Samuel**. In **Desmond Baptiste**, Sir Dennis said [at pages 19-20]:

> "Retribution
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> > "Retribution at first glance tends to reflect the Old Testament biblical concept of an eye for an eye, which is no longer tenable in the law. It is rather a reflection of society's intolerance for criminal conduct. Lawton LJ stated at page 77 that:
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> > > "...society through the courts, must show its abhorrence of particular types of crimes, and the only way the courts can show this is by the sentences they pass."
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> "Deterrence
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> > "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.

[21] 60 Cr. App. R. 74.
[22] Criminal Appeal No. 8 of 2003 [Saint Vincent & The Grenadines] (unreported).

"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."

[45] Undoubtedly, the main objective of a criminal sanction is for the protection of the public. But, deeply rooted in this overarching purpose are the concepts of deterrence, retribution and rehabilitation which Sir Dennis so eloquently encapsulated.

[46] I will consider each of these principles as it relates to Mr. Edwards. Deterrence is necessary in order to deter others like Mr. Edwards from following suit.

[47] Retribution, in the sense of showing society's abhorrence of this senseless killing, seems to be one of the meaningful elements that can go into punishing Mr. Edwards.

[48] Lord Lane CJ in the English case of **Taylor**[23] 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. I share those sentiments.

[49] Rehabilitation is to ensure that an offender is provided with facilities or services aimed at improving his behavior. I believe that Mr. Edwards will do well with some counseling during his incarceration. I so order.

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[23] (1987) 9 Cr. App. R (S) 175.

[50] Next, manslaughter is a serious offence. This is reflected in the penalty it carries. In this case, a young life has been lost. A fairly young man is before the court facing a maximum sentence of life imprisonment.

[51] In determining an appropriate sentence, our Court of Appeal has suggested a benchmark of 15 years for manslaughter by reason of provocation. As already stated, the benchmark can be scaled up or down depending on the facts and circumstances of the case, particularly the aggravating and mitigating factors which may be present. The fact that Mr. Edwards pleaded guilty entitles him to a one-third discount. I have also considered that Mr. Edwards has no relevant previous convictions and he is remorseful. I will accordingly make adequate discounts for these additional mitigating factors. In addition, learned Counsel Mr. Daniels implored the court to temper justice with mercy. As I stated in **Brian Walters v The Queen**,[24]

> "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.
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> 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."

[52] In the present case, the aggravating factors are numerous. By my reckoning, there are nine. They far outweigh the mitigating factors.

[53] The circumstances of this offence, by any standard, are of utmost gravity. The court can only say that the Crown was magnanimous in accepting a plea of guilty to manslaughter and not proceeding with the murder charge. The facts and circumstances of this case showed that the deceased was not involved at all. To the extent that the deceased may have been involved, his role was more or less that of a peacemaker, picking up lethal weapons and placing them away from the troublemaker [s]. This is captured on the CCTV Footage.[25]

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[24] BVI Criminal Case No. 3 of 2008. Written judgment on sentencing delivered on 27 May 2008, paragraphs 47 and 48.

[25] Tendered in the Magistrate Court as Exhibits KC2 and KC3 which are now in the possession of the High Court.

[54] Having regard to the numerous, mostly unreported cases referred to by the Crown and the submissions of Ms. Benjamin and Mr. Daniels, I am constrained to depart from the benchmark of 15 years set by our Court of Appeal because of the plethora of aggravating factors including (1) the use of a firearm in a public place; (2) the firearm was illegal; (3) many patrons were present at the time and were in the near vicinity; (4) an innocent bystander was shot and (5) Mr. Edwards' nauseating post-offence behaviour. Offences of this nature are becoming prevalent in this Territory. Many murders involving the use of firearms are unsolved. The perpetrators are at large and it is a mystery how these illegal firearms enter the Territory.

[55] I have given due consideration to all that was said in mitigation including Mr. Edwards' age, his children and family, his previous good character, his remorse and the fact that he has pleaded guilty. However, in the circumstances, he has committed an extremely grave offence. An innocent man was senselessly gunned down. The deceased has left behind other siblings and a grieving mother who seeks justice. Mrs. Thomas said that she depended on the deceased both financially and emotionally. To quote her once again, she said:

> "There were times when I am feeling down and out, he would hug me and try to cheer me up. I have four children and they are all different in their ways. Junie was the one who was most emotionally attached to me, the other children would say that he was a pet but to me, I felt good when he would look out for me like that. I have been believing in God to keep me since one guy with a gun robbed me of my pride and joy. Although I have other children, there is still a void inside of me..."

[56] It is almost impossible to envisage a more unfortunate case. There is no greater harm known to the criminal law than death. It robs the victim of his life and causes deep distress and deprivation for his relatives.

[57] Further, I was unable to find any local or regional case where the facts and circumstances are similar to the present case. A case that bears a little parallel is the case of **The Queen v Germaine Sebastien**.[26] The defendant was indicted for the murder of six-year old Jamiel Greenacre. The brutal death of little Jamiel remained a dilemma as the defendant remained silent. However, upon his arraignment, he pleaded not guilty to murder but guilty to manslaughter. The plea was

[26] Criminal Case No. 4 of 2006, British Virgin Islands [unreported].

acceptable to the Crown on the basis that the medical evidence clearly pointed to substantially diminished responsibility. Medical evidence confirmed that the defendant was mentally-challenged when he committed the offence and that his condition, although incurable, was treatable, and could be controlled with medications, anti-psychotics and psychotherapy. The psychiatrist stated that the defendant remains a potential threat to society. The court took into consideration that there were/are no proper and safe institution in the British Virgin Islands to house mentally impaired persons. The defendant was sentenced to life imprisonment. After spending a minimum of 25 years in prison, he will to return to court with a view to his release upon further psychiatric evidence.

[58] Another helpful case is **Devon Dawson v The Queen**.[27] Dawson was sentenced to 20 years imprisonment for attempted murder and grievous harm with intent after he was found guilty by a jury. He appealed his conviction and sentence. The Court of Appeal held that the matters put forward in the appeal were questions of facts which can only be determined by the jury and do not entitle the appellant to succeed in the appeal. The Court of Appeal did not interfere with the 20 years sentence.

The sentence

[59] I have looked at all the facts and circumstances of this case. In the premises, I hereby sentence you, **KEON EDWARDS** to 20 years imprisonment to commence from the date of your remand, i.e. 23 October 2009.

[60] In addition to this sentence, I will order that Mr. Edwards receives such counseling to be determined by a qualified counselor to assist him in anger management.

Indra Hariprashad-Charles
High Court Judge

[27] British Virgin Islands Civ. App. No. 1 of 2007 [unreported].