

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

SAINT LUCIA

CRIMINAL CASE: SLUCRD 2009/1690

BETWEEN:

THE QUEEN

Claimant

AND

ALDRICK WILLIAM

Defendant

Appearances:

Mr. Alberton Richelieu for the Defendant
Mr. S. Brette, Crown Counsel for the Crown

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2011: July 1 and 5

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JUDGMENT ON SENTENCING

[1] BENJAMIN, J. : By an indictment laid by the Director of Public Prosecutions on August 24, 2010, the Defendant, Aldrick William, was charged for the offence of murder contrary to Section 85(b) of the Criminal Code of Saint Lucia 2004. The said indictment accused the defendant of causing the death of Norbert Mc Donald intending to cause grievous bodily injury to the said Norbert Mc Donald on September 6, 2009 on Front Street, in the village of Anse la Raye.

[2] The defendant first pleaded not guilty to the offence of murder. However, subsequently, at his request, the indictment was again put to the defendant and he pleaded not guilty to murder but guilty of manslaughter. The latter plea was accepted by the Crown who elected not to pursue the charge of murder. The defendant is therefore before the court for sentencing.

[3] The facts as stated by the learned Director of Public Prosecutions are that the incident took place near a vendor's booth at Front Street in the village of Anse la Raye. That vendor's booth is the venue for the playing of dominos. A game of dominos was in progress on the alleged day in question, September 6, 2009, at about 11:25 a.m. The defendant and the deceased, Norbert Mc Donald, were witnessing the game along with others.

[4] The defendant began to call the deceased "Botty" a nickname by which he is known. The deceased objected and warned the defendant to desist from disrespecting him, and making joke with him. The deceased then slapped the defendant twice on his chest with his hands, held onto to the front of the defendant's shirt and pushed him against the shed. The defendant was seen running away into a nearby yard. He returned from behind a house and proceeded to stab the deceased in the left side of his face with a piece of steel. A piece of ½ inch steel measuring approximately 3 feet 6 inches was recovered by the Police from the street.

- [5] After stabbing the deceased, the defendant ran away. The deceased pulled the piece of steel out of his face and blood began to gush out of the wound and out of his mouth. The deceased was transported in his own minibus to the Victoria Hospital where he was pronounced dead on arrival there. In the meanwhile, the defendant went to the Anse la Raye Police Station, and made a report against the deceased for beating him.
- [6] The defendant gave a statement under caution to the Police. He stated that while playing cards on Front Street, he saw the deceased watching a game of dominoes and shouted: "Botty". He confirmed that the deceased approached him, struck him on his chest and held his shirt after he pushed the deceased. The defendant admitted going behind a house nearby, taking up a piece of steel and striking the deceased with it in his mouth. Upon being formally charged and cautioned, the defendant stated that he was defending himself with the piece of steel.
- [7] The foregoing facts were presented by the Crown and accepted by the Defence with additional references to the witness statements as providing added detail to support the plea of mitigation.
- [8] The acceptance of the plea was plainly premised upon the partial defence of provocation afforded by Section 91 of the Criminal Code of Saint Lucia 2004. There is evidence to support a finding by a reasonable jury that the defendant was provoked by what was said and done by the deceased so as to lose his self-control would have a reasonable person in similar circumstances. The stabbing

was done on all accounts within minutes of the deceased striking the defendant holding him by the front of his shirt and pushing him. The court is satisfied that the facts substantiate the plea of guilty of manslaughter.

[9] The post-mortem examination report recorded the cause of death as haemorrhagic shock secondary to a penetrating injury to the left cheek with respiratory failure secondary to aspirated blood as a contributing factor. The injury penetrated to the right side of the neck through the oral cavity with a laceration to the right carotid artery,

[10] The defendant has been in custody since the date of the incident and is presently on remand at the Bordelais Correctional Facility,

Pre-Sentence Report

[11] As mandated by Section 1098 (1) of the Criminal Code, there being the contemplation of a custodial sentence, the Court acceded to the request of Counsel and ordered and obtained a pre-sentence report compiled by a Probation Officer. This report has been of tremendous assistance to the Court at this phase of sentencing.

[12] The defendant is now 21 years of age and he was nineteen (19) years of age at the time of the offence. He resided at Market Street, Anse la Raye with his parents and he is the ninth of their ten (10) children. His entire upbringing has

been in the village of Anse la Raye. The Court was informed by learned Counsel that the defendant is the first cousin of the deceased's wife. The deceased was forty one (41) years of age at the time of his death and resided with his wife in the same village from which he plied the route to and from Castries with his mini bus.

[13] The entire report predominantly contains good reports on the conduct and character of the defendant. His own mother described as helpful in doing chores for the home and as being a normal quiet, reserved young person. His father attested to the defendant never being in any trouble in the community, to his knowledge. These traits were confirmed by the defendant's older brother and sisters. They all stated that they were shocked by what the defendant did. Members of the community echoed the sentiments of the defendant's parents and siblings. No one attributed aggression or trouble making to the defendant although one villager did say that while the defendant was quiet when he got angry he would fly into a rage and would make threats.

[14] The defendant is afflicted with bouts of epileptic seizures which began when he was fifteen (15) years old. The Court was informed that the defendant is on daily medication for this condition, but the seizures nevertheless occur. He has had about nineteen (19) attacks since being incarcerated.

[15] The defendant has had a primary education. He was unsuccessful in qualifying for secondary school and he enrolled in the CARE facility at Anse la Raye. He commenced the ADP and Electrical Programmes but did not complete same. He

also displayed an aptitude for carpentry and joinery although he appeared to be distracted by inner conflict. It would appear that the onset of epilepsy removed his confidence and caused trepidation as to the consequence of an impending seizure.

[16] The defendant was unemployed at the time of the incident. The report attributed the defendant's discontinuing going out to sell with the fishermen to his seizures. The same reason was given by the defendant for not continuing to work doing carpentry with his brother.

[17] The defendant admitted that he began smoking marijuana when he was fifteen (15) years of age and a villager corroborated that the defendant would smoke "weed" occasionally. In addition, the defendant told the Probation Officer that he would gamble the earnings he made from working with the fishermen; however he insisted that was not driven by compulsion but merely gambled as a pastime. From the report, it was gleaned that the only seriously negative aspects of the defendant's character are his penchant for the abuse of cannabis and his predilection to gambling.

[18] The report informs that the defendant has expressed remorse and shame. He has acknowledged his wrong doing. It is fair to say that his contrition is manifested in his plea of guilty to manslaughter. The defendant said that he is a changed person and regularly attends the prison Chapel.

SENTENCING

[19] General guidelines to sentencing are provided in Section 1102 of the Criminal Code for observance by the Court. Section 1102 (2) states:

“(a) the rehabilitation of the offender is one of the aims of sentencing and
(b) the gravity of the punishment must be commensurate with the gravity of the offence”.

As it was put by Byron, CJ in Desmond Baptiste et al v R.- Criminal Appeal No. 8 of 2003 (St. Vincent and the Grenadines): - “Perhaps the most difficult and controversial area for the sentencer is fitting the punishment to the crime committed”. In that consolidated appeal against sentences, the learned Chief Justice adopted and explained the classical principles of sentencing, namely, retribution, deterrence, prevention and rehabilitation. As I see it, this court must focus on the rehabilitation and prevention from the subjective standpoint of the defendant. It seems to me that by applying the benchmark set by the Court, the deterrent and to a lesser extent the retributive factors would be accounted for and reflected.

[20] In seeking to arrive at a suitable punishment, the Court must weigh the mitigating features of the case and of the offender against the aggravating factors. It is without demur that the sole aggravation has been the manner and execution of the offence, more specifically, that a piece of steel was used to wound the deceased in circumstances where he was unarmed at the time. The mitigating features without doubt outweigh the aggravating factors. The former factors were fully alluded to be the learned Counsel for the defendant. In the first instance, the

defendant is relatively young and he has no criminal record. He has pleaded guilty and by so doing has demonstrated remorse which he has articulated to the Probation Officer and through his Counsel. His propensity to be law abiding is borne out by the fact of his attendance at the Police Station to make a report soon after the incident at a time when he was unaware of the fatal consequences of his action.

[21] The Court is troubled by the defendant being prone to epileptic seizures notwithstanding the taking of medication. Any punishment must take into account that from time to time the defendant will suffer attacks of epilepsy as has been the case during his period on remand.

[22] The defendant is a prime candidate for rehabilitation and his return to society can be accomplished sooner than later. In showing contrition he has made himself open to contemplating the non-repetition of the act.

[23] The Court of Appeal and the High Court have consistently approved a benchmark of fifteen (15) years for the offence of manslaughter (see: Tench v R – Criminal Appeal No, 1 of 1991 (St. Lucia); Dennis Alphonse v R. Criminal Appeal No. 1 of 1995 (St. Lucia); James Jn Baptiste v R. Criminal Appeal No. 10 of 1994 (St. Lucia); Kenneth Samuel v R. Criminal Appeal No 7 of 1975 (St. Vincent and the Grenadines); R v Trudy Edward – High Court Case No, 1 of 2004 (St. Lucia). This sentencer has faithfully followed this judicially approved upper limit to the sentence for manslaughter by way of provocation.

[24] This case obviously does not fall into the category of the worst cases. On the contrary, the circumstances as previously iterated lean heavily towards a sentence far below the bench mark being sufficient to meet the gravity of the offence.

[25] The defendant is entitled to a remission on account of his guilty plea. In addition the Court ought to take into account the time he has spent on remand. This was advocated by Byron, CJ in Desmond Baptiste v. R. (supra – at para. 50) on the basis that the defendant has been deprived of his liberty in relation to that offence. In the recent case of Romeo Da Costa Hall v R. CCJ Appeal No. CRI of 2010, the majority of the panel of the CCJ had this to say:

“The primary rule is that the judge should grant substantially full credit for time spent on remand in terms of years or months and must state his or her reason for not granting a full reduction or on reduction at all”.

The court embraces this dictum without reservation.

[26] The court has taken all factors mentioned into consideration. Even with the overwhelming mitigating factors and the fact of the defendant not having been the aggressor, the Court must nevertheless recognize the need for the exercise of self control by individuals faced with situations of conflict. The defendant was far too hasty to go in search of a weapon to retaliate albeit on the spur of the moment and in the heat of affray. Accordingly, it is inevitable and imperative that a custodial sentence be imposed.

[27] As I see it, the proper punishment would be seven (7) years imprisonment from which there must be a deduction of twenty (20) months. In the premises the defendant is sentenced to five (5) years imprisonment commencing from today's date.

KENNETH BENJAMIN
HIGH COURT JUDGE