

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

SAINT LUCIA

CASE NO. SLUHCRD2009/0025

BETWEEN:

THE QUEEN

Complainant

-v-

CLAUDIUS EDWARD

Defendant

Appearances:

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

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2011: May 23, June 22 and July 11
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JUDGMENT ON SENTENCING

[1]. **BENJAMIN, J:** On May 23, 2011, the defendant, Claudius Edward, pleaded guilty to the offence of manslaughter on an indictment which preferred a charge of murder contrary to section 85 (b) of the Criminal Code of Saint Lucia 2004. The Indictment alleged that the defendant caused the death of McMilan John Joseph also known as Johnny, intending to

cause the said McMilan John Joseph grievous bodily injury, on July 3, 2006 at Jacmel, Anse-La-Raye.

- [2]. At the request of Counsel the sentencing hearing was adjourned to obtain a pre-sentence report which has since being submitted. A plea in mitigation of sentence was presented by Counsel on behalf of the defendant.
- [3]. The defendant is a thirty-five (35) year old man who has never been married and has no children. Prior to the incident, the defendant was in an intimate relationship with one Sonia George who hailed from Jacmel, Anse-La-Raye. It is at the home of Sonia George's parents at Jacmel where she then resided that the incident took place.

THE FACTS

- [4]. The plea was plainly premised on the Crown's acceptance that provocation featured on the evidence. However, the Crown's version of the facts varies from what defendant told the Probation Officer and what was urged in mitigation. Crown Counsel told the Court that Sonia George had unilaterally ended her intimate visiting relationship with the defendant in April 2006 and had thereafter developed an intimate visiting relationship with the deceased. The defendant told the Probation Officer that it was a cohabiting relationship where the defendant and Sonia George lived together at Bocage. Learned Counsel told the Court at the sentencing hearing that, from about February 2005 to about June 2006, the defendant and Sonia George lived with the defendant's brother at Bocage. The defendant told the Probation Officer that Sonia George had left Bocage to pay an extended visit to her parents and he went to visit her there for the weekend. It follows from this that the defendant did not consider the relationship to be at an end and that Sonia George did not disclose her prior cohabitation with the defendant. It however is not disputed that Sonia George and the deceased were involved in a relationship.

- [5]. In support of his contention that the relationship with Sonia George still subsisted at the time of the fatal incident, the defendant told the Probation Officer that Sonia George had told her parents that she was two months' pregnant and that he was the father. He recalled purchasing alcoholic drinks to celebrate the announcement. Subsequent events reveal that Sonia George did deliver a child but she claimed to be uncertain of paternity and opted to give up the child for foster care.
- [6]. The Crown's version of events is that the deceased was visiting Sonia George at her parents' home from July 2, 2006 and while there, the defendant came in the house protesting the presence of the deceased and refusing to leave the house. The defendant told Sonia George that the deceased was not in a position to help her or to take care of her. Sonia George repeated to the defendant that their relationship was at an end. The defendant refused to leave and remained in the house at time leaving the house to going outside only to return. While Sonia George, her family and the deceased were watching television in the front room of the house, the defendant asserted that he was not moving and that he was sleeping at the house that night. The deceased told the defendant to leave the house. The defendant went outside with Sonia George who called her brother in an effort to have the defendant sleep at her brother's house nearby. Her brother did not respond. She tried to return to her parents' home and close the door on the defendant but he barged back into the house behind her. Sonia George state the defendant went up to the deceased and stabbed him quickly with a long knife on the left side of his chest. Sonia George's mother stated that the deceased was asleep all the time. The defendant then ran away. Sonia George said that when the deceased got stabbed she went into the bedroom and got a cutlase while the deceased fell into a chair without doing anything.
- [7]. The defendant told the Probation Officer that at about 1:00 a.m. on July 3, 2006, the deceased came to the house and sat next to Sonia George. The defendant asked her for an explanation and the deceased began yelling at him. It is at this point he said that Sonia George told him their relationship was at an end resulting in an argument. The defendant

continued that the deceased reaching for a cutlass and attempted to stick him with it but he evaded the cutlass. He tried to leave the house but the deceased blocked his exit. He then picked up a knife and as the deceased tried to strike him a second time he pricked him with the knife and the deceased fell into a chair and the cutlass fell from his hands to the floor. The defendant related that Sonia George got angry and pursued him out of the house while he had the knife in his hand.

- [8]. During his mitigation plea, learned Counsel furnished the added detail that the defendant was following Sonia George back to the house, after she tried calling her brother, he inquired of her. "I thought you told me you were pregnant for me, what happen now?" As she tried to push him out of the house, an altercation arose between the defendant and the deceased. The deceased picked up a cutlass and in attempting to swing it at the defendant he lost his balance at which time the defendant took a knife he saw on a table and inflicted the fatal blow.
- [9]. The defendant left the house with the knife after the incident. He was subsequently apprehended by Police and a knife fourteen (14) inches in length was recovered after the defendant was seen to pull it out from under his shirt.
- [10]. After a post-mortem examination, the cause of death of the deceased, McMilan John Joseph aka Johnny formerly of Bisee, Castries, was given by the pathologist as hemorrhagic shock as a result of a single stab wound to the chest.
- [11]. The Defence asserted that the things said and done by both the deceased and Sonia George caused the defendant to react out of terror of imminent harm thereby losing his self-control. In this regard, learned Counsel referred to the case of **Jabeel Lewis v. The State** – Privy Council Appeal No. 93 of 2009 at paragraphs 15, 16 and 18.

[12]. Learned Counsel adopted the version of the facts given to the Probation Officer in preference to the stated account of the Prosecution. The adopted version makes reference to the deceased shouting at the defendant to leave the house, followed by Sonia George declaring that she was no longer in a relationship with him and the deceased accosting the defendant with a cutlass. These matters were urged as the basis for the loss of self-control by the defendant. It seems plain that these events amounted to sufficient evidence upon which a factual finding could be made as to the defendant being provoked to lose his temper within the meaning of section 91 of the Criminal Code of Saint Lucia, 2004.

PRE-SENTENCE REPORT

[13]. The defendant was raised by his mother and he has never known his father. He has three siblings - two older brothers and an older sister. He was his mother's youngest and favourite child. His mother died in 2007 while the defendant was incarcerated and he complained that since then he has not received any family visits.

[14]. The defendant attended primary school until the age of 16 years when he began working as an electrician. His reading and writing skills are deficient. He has worked in the construction field and doing landscaping.

[15]. The defendant was born and lived in Bois Patat, Morne du Don until the age of 10 when he moved with his mother to Bocage. His memories of growing up are pleasant. He was brought up in the Church of God and he says that he still prays and fasts as he was taught.

[16]. The defendant's sister told the Probation Officer that the defendant is a very quiet and reserved person who was very close to his mother. She said that the defendant suffered a seizure in his childhood and that he is slow in comprehension and stammers when speaking. The stuttering was noted by the Probation Officer. His sister recalled that when the defendant began to smoke cannabis, he neglected his oral and personal hygiene and took to being unkempt, cooking outside and growing dreadlocks. The defendant's oldest

brother concurred that the defendant was reserved and quiet and that the defendant smoked cannabis.

[17]. A member of the community of Bocage also described the defendant as reserved, quiet and non-violent but someone who did not act sane. This person also spoke of the defendant smoking cannabis. Other persons in the community recalled that the defendant as being shabby in appearance and slow in speech. He was said to be living in an abandoned house in the bush with another male person and Sonia. Of the persons interviewed, both siblings and persons who know him in the community, the defendant was said to be dirty in appearance, unpleasant in odour and smoked cannabis.

[18]. The defendant told the Probation Officer that he was shocked by the news of the deceased's passing. He intimated that his intention was not to kill or harm the deceased. Generally speaking, the defendant has expressed remorse.

[19]. The defendant said that he only wanted to spend time with his pregnant girlfriend, Sonia George, who was his first love when he was twenty-nine (29) years of age.

PSYCHIATRIC STATUS

[20]. The defendant told the Court that he has never been a patient at the Golden Hope Hospital. Research by the Probation Officer failed to turn up any records pertaining to the defendant at the National Mental Health and Wellness Centre. However, the record at Bordelais Correctional Facility indicates the contrary and the defendant has been frequently seen by the psychiatrist while on remand. The defendant is being administered anti-psychotic medication twice daily. Learned Counsel stated that the defendant had been a patient at Golden Hope Hospital. The defendant has complained that he does not always ingest the medication as it makes him feel ill.

- [21]. The officers at the Bordelais Correctional Facility (BCF) reported that the defendant is very quiet and he has not displayed abnormal behaviour.
- [22]. The issue of the defendant's psychiatric status having been raised in the pre-sentence report, Learned Counsel addressed the matter in mitigation. What is accepted by the defendant and confirmed by the prison authorities is that the defendant is being treated with anti-psychotic medication which is administered twice daily; this is clearly suggestive of a mental health issue being addressed.
- [23]. Attempts to obtain a psychiatric assessment of the defendant have proved futile. Nevertheless, the mental state of the defendant can properly be taken into account for sentencing purposes.

SENTENCING

- [24]. The Court is required by section 1098 (1) and (3) of the Criminal Code 2004 to obtain and have regard to a pre-sentence report. In its approach to sentencing, the Court is mandated "to take into account all such information about the circumstances of the offence (including any aggravating or mitigating factors) as is available to the Court" Such report is recognized to be of assistance in determining the most suitable method of dealing with the offender. [see: S.1098 (5)]
- [25]. By section 1097 of the Criminal Code 2004, the Court must impose a term of imprisonment that is commensurate with the seriousness of the offence. In addition, the sentencing Court must following the general judicial guidelines set out in Section 1102 of the Criminal Code which include the rehabilitation of the offender and the observance of the principle that the gravity of the punishment must be commensurate with the seriousness of the offence.

[26]. In the consolidated appeal of **Desmond Baptiste et al. v. R.** – Criminal Appeal No. 8 of 2003 (St. Vincent and the Grenadines) Byron, CJ identified the classical principles of sentencing as being retribution deterrence, prevention and rehabilitation. In the present case, the Court must be primarily concerned with the principles of deterrence and rehabilitation.

[27]. Learned Counsel submitted that the mitigating features of the case outweighed the aggravating factors. He identified the mitigating aspects to be the following:

- 1) The defendant having pleaded guilty at the first reasonable opportunity;
- 2) The defendant has no prior antecedents;
- 3) The defendant has expressed remorse which is also demonstrated by the plea taken thereby accepting responsibility for his actions;
- 4) The mental status of the defendant based on the anticipated psychiatric assessment and the fact of the defendant being on anti-psychotic medication;
- 5) The absence of any lapse of time between the provocative acts and the acts resulting in death; and
- 6) The defendant having been on remand since July 3, 2006 and ought to be given full credit (see: **Mohamed Callachand et al. v. The State** [2008] UKPC 49; and **Romeo D Costa Hall v. R.** CCJ. Appeal No. 1 of 2010 at paras 39 & 40.)

The aggravating factors were stated as:

- 1) The seriousness of the offence of manslaughter; and;
- 2) The defendant's attempt to evade apprehension by the Police that resulted in him being shot.

[28]. The mitigating matters are fully acknowledged and adopted. However, in relation to aggravating features, the Court is disinclined to treat the so called evasion of capture as an aggravating factor given the equivocal nature of this factor. In sum, it is accepted that the

mitigating features do outweigh the sole aggravating factor in the case. The Court notes that the cause of death emanated from a single stab wound.

[29]. The High Court in Saint Lucia and the Court of Appeal have consistently applied a benchmark of 15 years for the offence of manslaughter which carries a maximum sentence of life imprisonment. [see: Tench v. The Queen – Cr. App. No. 1 of 1991 (St. Lucia); Dennis Alphonse v. The Queen – Cr. App. No. 1 of 1995 (St. Lucia); The Queen v. Trudy Edward – Criminal Case No. 56 of 2003]

[30]. The present case like that of Trudy Edward (supra) involves a single stab wound. There is no history of violence by the defendant although there is a history of mental illness which provides an exceptional feature to this case. Learned Counsel has emphasized the need for the Court to have regard to the rehabilitation of the defendant.

[31]. The defendant is of previous good character. Around the time of the incident, he was of the firm impression, having been so informed, that Sonia George, was pregnant with his child. It is also now clear that, whether or not Sonia George considered the relationship to be at an end, he was not so convinced. His behavior on the night of the incident suggests that he was not accepting of Sonia George being in a new relationship. There is, however, nothing on the evidence to suggest that the fatal act was premeditated nor is there evidence of the defendant having armed himself in advance.

[32]. The defendant has exhibited a quiet demeanor and has displayed no abnormal behaviour while on remand. His lifestyle prior to the incident as reported by members of the community and by the defendant himself involved marijuana abuse and living in sub-standard conditions. There is no reported history of violence or aggression on his part.

- [33]. The Court is handicapped by the absence of a psychiatric assessment of the defendant. But the sentencing of the defendant cannot be further delayed.
- [34]. There is nothing to suggest that the defendant will resort to violence again. He is clearly remorseful and there is his admission to cannabis abuse. The Court is concerned that the punishment shall be reflective of the seriousness of the offence while accepting that the defendant has displayed the capacity to be reformed and rehabilitated before returning to the community.
- [35]. The defendant is entitled to a discount for his plea of guilty but given that the same did not occur at the earliest opportunity the full customary one-third reduction from the starting point will not be applied. There must be full credit for the appropriate period of five years spent on remand.
- [36]. Taking all matters into consideration, the Court finds that a custodial sentence is warranted. The defendant is sentenced to six (6) years imprisonment.


KENNETH BENJAMIN
HIGH COURT JUDGE