

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

SAINT LUCIA

CRIMINAL CASE NO. SLUCRD2011/0079

BETWEEN:

REGINA

Claimant

AND

GAIUS FREDERICK MC. LAUREN

Defendant

Appearances:

**Mr. G. Charlemagne, Mr. V. Gill Counsel for the Defendant
Mr. G. James Crown Counsel for the Crown**

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2011: November 15
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SENTENCING JUDGMENT

[1]. **CUMBERBATCH, F.:** On the 6th January 2011 the defendant was indicted by the Director of Public Prosecutions for the offence of murder. The indictment alleged that on the 20th May 2006 the defendant whilst intending to cause grievous bodily injury to Adrian Joseph Frederick caused his death. On the 19th September 2011 the crown accepted a plea by the

defendant of guilty to the lesser offence of manslaughter. The court ordered a sentencing hearing to be held on the 27th September 2011 and also ordered a pre-sentence report be provided.

THE FACTS

- [2]. Adrian Joseph Frederick 'the deceased' was the uncle of the defendant. They lived in close proximity to each other and other members of the family on a slope in the Odsan community. At that time the deceased cohabited with one Esther Robinson. On the 20th May 2006 at around 10.00 am the defendant was by the roadside about one hundred and twenty (120) feet away from where the deceased resided and was drinking and smoking. He was heard to be saying that he doesn't know why his uncle is bringing those old people around and that Esther Robinson was a coke head. Esther Robinson responded to the utterances of the defendant and an oral altercation ensued between the defendant and Robinson at the home of the deceased. The defendant then threw a stone at the home of the deceased. The deceased armed himself with a cutlass and asked the defendant why he threw the stone at his home. The defendant thereupon got a piece of (2 x 2) wood and struck the defendant on his hand causing him to lose the cutlass. A struggle ensued between the defendant and the deceased during which they both rolled down the slope. The deceased's chest was struck by a tree trunk at which time the defendant jumped on his back several times and gave him a few kicks to his head and body. The deceased at the end of the fracas was seen vomiting blood. He was later admitted to the Victoria Hospital and died on the 22nd May 2006.
- [3]. A post mortem examination was performed by Dr. Stephen King on the 23rd May 2006. The cause of death as shown by the examination appears to be respiratory failure secondary to blunt trauma to chest resulting in right pression hermithorax and multiple rib fractures on right.

THE HEARING

[4]. At the hearing counsel for the defendant submitted that the defence took no issue with the facts as set out aforesaid but highlighted certain issues. These are as follows;

1. The deceased was the aggressor in the incident between himself and the defendant;
2. The deceased was at the time of the incident under the influence of drink or drugs;
3. The deceased armed himself with a cutlass and went after the def.;
4. The deceased whilst swinging his cutlass at the defendant was heard to be saying in patois "I will kill you", "I will kill you"

Mr. Charlemagne went on to address the court on what he considered to be the aggravating and mitigating factors which arise out of this incident. These are;

[5]. AGGRAVATING FACTORS

1. If the evidence of Romeius Henville is to be believed as per the above then Gaius was the aggressor in this situation.
2. Gaius states in the Pre-Sentence Report of Mr. Germaine R. Alexander of October 20, 2011 ordered by the Court in this matter (hereinafter called "The Report") at paragraph 116 that "he should not have thrown the stones at the house as that was what that started everything".

[6]. MITIGATING FACTORS

- I. Gaius pleaded guilty to the offence of manslaughter at the earliest opportunity and avoided the necessity of a trial. This factor usually accounts for a one third (1/3) reduction in the length of sentencing i.e. pleading guilty at the first reasonable opportunity;
- II. Gaius has no previous convictions nor has he been charged with any offence;

- III. Gaius is of youthful age. He was born on the 20th December, 1985. He is now twenty-five (25) years old. The incident took place when Gaius was twenty (20) years old;
 - IV. As per the Report Gaius's education was only of primary level and he is not able to read fluently (paragraph 56). The lack of educational advancement may be considered as a factor affecting rational behaviour on his part if in any case he may be seen by the Court to have acted irrationally in all the circumstances of this case;
 - V. Issues of provocation and self defence arise in this case albeit Gaius has pleaded guilty to manslaughter thus removing the latter in the absence of a trial. However, as stated previously, four of the material witnesses who claimed to have seen the altercation stated that the deceased was the aggressor and that Gaius was seen running for his life and was in imminent fear of his life being in danger or at least grievous bodily harm occurring to him. In all the circumstances of this case it appears that the fight was provoked by the deceased who according to two of the witnesses above may have been under the influence of drink and drugs.
 - VI. The spontaneity of the event. Gaius and the deceased were fighting on a slope. The deceased died as a consequence of rolling down that slope and hitting his chest against a tree stump as per the medical evidence of Dr. King stated above. There is no evidence to indicate that Gaius deliberately led him to do so.
 - VII. Gaius has clearly indicated from the contents of the report that he is remorseful about what happened on that fateful day May 20, 2006. (see victim impact para 70; also paras. 108; 116). Gaius also indicates that to Defence counsel particularly the fact that they are related.
- [7]. Counsel went on to submit that the facts weighed heavily against the deceased as the

aggressor. He asked the court to consider his client as a prime candidate for rehabilitation and as a good prospect for re-integration into the society. He contends that though the offence of manslaughter is a serious one he felt that the mitigating factors far outweigh the aggravating ones. Counsel also provided the court with a number of authorities on which he relied in support of his submissions.

The court had the benefit of a rather comprehensive pre-sentence report on the defendant. The report indicates that the defendant has a deep sense of remorse and blames himself for the whole incident. The report also states that the residents of the community in which the defendant resided speak of him in glowing terms. On the other hand the deceased was described in uncomplimentary terms and it is stated that he didn't see eye to eye with the majority of the community. Indeed his son Jason Frederick states;

"he indicated that his father was not a "good" father. Mr. Frederick said that his life is better off now without his father; he explained that there are no more fights and quarrels and he is able to live a peaceful life. He stated that his father's alcohol, drug use and violent outbursts with him and person in the community caused a strain on their relationship".

[8]. The defendant has been described by the officials at Bordelais Correctional Facility to be of exemplary conduct. His last employer considered him to be a good worker who needed little supervision. There were no negative opinions expressed of the defendant by persons with whom he came into contact.

[9]. **THE LAW**

A useful starting point would be to examine the classical principles of sentencing. The classical principles of sentencing namely retribution, deterrence, prevention and rehabilitation were laid down by Lawson LJ in the celebrated case of **R v James Henry Sargeant** 1974 60 Cr. App. R. 74. in that decision Lawson LJ stated that '***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.'

In *Desmond Baptiste v Regina* CJ Sir Dennis Byron embraced and applied these principles. I will now apply these principles to the case at bar.

[10]. **RETRIBUTION**

In considering the circumstances surrounding this incident as a whole I find that it was neither planned nor premeditated. It evolved out of what can be considered to be no more than vulgar abuse which got completely out of hand. I accept that the deceased was the aggressor in that by arming himself with the cutlass and going after the defendant he took the incident to the next level that is from vulgar abuse and posturing to actual violence. However I find the acts of the defendant of kicking and stomping the deceased when he was unarmed to be uncalled for and unnecessary.

[11]. **DETERRENCE**

The defendant prior to this conviction was possessed of a clean criminal record. The reports of his character and conduct as stated by his peers in the community in which he resided and his previous employers leads me to find that the sentence should not be designed to deter the defendant from committing other offences of a similarly violent nature. The court must however of necessity impose a suitable sentence to send an unequivocal message to those who may for whatever reason chose to violate the sanctity of human life.

[12]. **PREVENTION**

In *R v James Henry Sargent Lawson* LJ opined that this principle is more applicable to repeat offenders. Lawson LJ opined "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". I find that with the hitherto clean criminal record of the defendant and the manner in which he has been characterized by his previous employer and members of the community that I need not consider or apply this principle in the sentencing process herein.

[13]. **REHABILITATION**

As was hereinbefore stated counsel for the defendant submitted that the defendant is a prime candidate for rehabilitation. I have noted the comments of the probation officer as to the conduct of the defendant whilst an inmate at Bordelais Correctional Facility. Though it must be accepted that at Bordelais Correctional Facility the defendant lives with the confines of a controlled environment and has very little opportunity to embark on frolics of his own, it is heartening to read that the favourable opinions expressed of the defendant whilst an inmate of the Bordelais Correctional Facility are echoed by his peers in the community from whence he came. In the circumstances I accept that the defendant is indeed a prime candidate for rehabilitation.

[14]. **AGGRAVATING AND MITIGATING CIRCUMSTANCES**

In considering the circumstances as a whole together with the submissions of counsel for the defendant I find the following to be the aggravating and mitigating circumstances herein.

[15]. **AGGRAVATING FACTORS**

1. The loss of the life of Adrian Joseph Frederick by grievous bodily injury;
2. The acts of brutality committed by the defendant in kicking and stomping the deceased whilst he was on the ground and unarmed;
3. The fact that the whole incident which resulted in the loss of the life of the deceased was initiated by the def.

[16]. **MITIGATING FACATORS**

1. The relatively early guilty plea of the defendant.
2. The defendant has accepted responsibility for this unfortunate incident and has shown deep remorse;
3. The hitherto clean criminal record of the defendant;
4. The conduct of the defendant whilst an inmate at the Bordelais Correctional Facility and the progress made by him by way of rehabilitation.

I consider the dictum of Rawlins JA (as he then was) in *Harry Wilson v Regina* No. 30 of 2004 to be instructive as to the manner in which I must consider and balance these factors. In that decision Rawlins J.A. stated:

- “17. It is a mandatory requirement in murder cases for a Judge to take into account the personal and individual circumstances of the convicted person. The Judge must also take into account the nature and gravity of the offence; the character and record of the convicted person; the factors that might have influenced the conduct that caused the murder; the design and execution of the offence, and the possibility of reform and social re-adaptation of the convicted person..... The sentencing Judge is fixed with a very onerous duty to pay due regard to all of these factors.*
- 18. In summary, the sentencing Judge is required to consider, fully two fundamental factors. On the one hand, the Judge must consider the facts and circumstances that surround the commission of the offence. On the other hand, the Judge must consider the character and record of the convicted person. The Judge may accord greater importance to the circumstances, which relate to the commission of the offence. However, the relative importance of these two factors may vary according to the overall circumstances of each case.”*

I have carefully considered and applied the dictum of Rawlings JA (as he then was) to the circumstances of this case and find that the aggravating factors outweigh the mitigating factors.


[17]. **SENTENCE**

I have considered the facts of this case and the submissions of counsel for the defendant. I have also taken into consideration the aggravating and mitigating circumstances. This case is as I have previously stated started out as no more than a case of vulgar abuse between the defendant and Esther Robinson the common law wife of the deceased. Matters however took a turn for the worse when the defendant threw a stone at the home of the deceased who armed himself with a cutlass and went after the defendant. I find that when the defendant succeeded in disarming the deceased, the matter could have been brought to an end at that stage. However it is clear that the defendant took advantage that opportunity to inflict kicks and to stomp the head and body of the deceased. I find that the defendant at that time exhibited a complete loss of control and became the aggressor. He thereafter proceeded to kick and stomp the deceased thereby causing his death. I find that the manner in which this took place to be quite brutal.

[18]. The accepted starting point for the plea of guilty to the lesser offence of manslaughter is fifteen (15) years imprisonment. I do not consider this to be a fitting case for a lower starting point to be applied.

[19]. The defendant pleaded guilty in a timely manner and has a clean criminal record. I will deduct five (5) years from his sentence therefore. I further find that for no reason attributable to him the defendant was in custody for approximately some four (4) calendar years before he was arraigned and given an opportunity to enter the plea of guilty to the lesser offence of manslaughter. Thus, for the unexplained delay I will deduct another two (2) years from his sentence.

[20]. I cannot disabuse my mind of the fact that the defendant engaged in a series of acts of brutality on an unarmed man whilst he was on the ground which resulted in his death. In the circumstances therefore I find that a sentence of eight (8) years imprisonment to be appropriate. The Defendant shall be fully credited for the time spent on remand whilst awaiting trial. His sentence shall take effect from the date of his initial remand to Bordelais Correctional Facility.


FRANCIS M. CUMBERBATCH
HIGH COURT JUDGE