

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA
CRIMINAL DIVISION**

CRIMINAL CASE NO: ANUHCR2011/0049

BETWEEN:

**THE QUEEN
AND
SYLVESTER LINDSAY**

Appearances:

Mr. Anthony Armstrong, Director of Public Prosecutions and Ms. Shannon Jones, for the Crown

Mr. Steadroy Benjamin for the Defendant

**2012: January 10
2012: January 17
2012: January 24
2012: January 25
2012: February 3**

JUDGMENT ON SENTENCING

[1] FLOYD, J: The defendant, Sylvester Lindsay, was convicted by a jury on December 1, 2011 of murder contrary to common law. The trial began on November 29, 2011. Witnesses were called and evidence was tendered. On December 1, 2011, the defendant, with the advice and assistance of counsel, changed his plea. This court was advised by learned defence counsel, Mr. Benjamin, that the defendant fully understood the ramifications of this course of action and was competent to instruct counsel. All possible defences had been explored and found wanting. The evidence was

compelling. With the consent of the learned director of public prosecutions (DPP), Mr. Armstrong, the defendant was re-arraigned on the indictment and a guilty plea was entered. The jury was therefore directed to enter a verdict of guilty and the defendant was convicted. To substantiate the conviction and support its case, the prosecution relied upon the facts in evidence led during the trial.

- [2] The defendant was convicted of the murder of Drew Gollan at English Harbour in the parish of St. Paul. The incident occurred on January 22, 2009.
- [3] At the time of conviction, the court ordered the production of a social investigation report for use at the sentencing hearing. That report was subsequently received and made available to the court, the DPP and defence counsel.
- [4] At the sentencing hearing of January 25, 2012, the Crown called one witness, the author of the social investigation report, probation officer (P/O) Irvin Henry. No witnesses were called on behalf of the defence.

FACTS

- [5] Drew Gollan was an Australian citizen and boat captain visiting Antigua and Barbuda. He had travelled with a female friend and her young child. On January 22, 2009 all three were walking on the Pigeon Point Main Road. It was evening and it was dark. As they walked, they were passed by a Noah van motor vehicle. Inside the van were several young male and female Antiguan. One of them was Sylvester Lindsay.
- [6]. The group inside the van had spent the afternoon and evening travelling to different places in the rented van, drinking alcohol and smoking marijuana. As the van passed Mr. Gollan, the woman and the child, the defendant told the driver to stop. The vehicle pulled over and the defendant got out. He approached Mr. Gollan.
- [7]. Erica Ryan was inside the van. She had not consumed any drugs or alcohol that day. She looked out the vehicle's rear window. It was dark but there were street lights by the road. She watched as the defendant confronted Mr. Gollan with a hand gun. Mr. Gollan swung a bag that he was carrying, striking the defendant. The defendant then fired his gun three times at Mr. Gollan. The

woman in the roadway was standing by holding her baby and screaming. The defendant retreated to the van, got in and they drove away.

- [8]. Francisca Morris was the girlfriend of the defendant and she was also in the van that evening. She too saw the man and the woman carrying the baby walking down the road. After the van stopped and the defendant got out, she heard three explosions or popping sounds. The defendant was still outside the van. It was dark. The defendant then returned to the vehicle. Once inside the van, the defendant was spoken to and admitted to firing the shots. He then laughed as the van slowly drove off, leaving Drew Gollan on the road where he fell.
- [9]. Jonathan Cornelius is a paramedic with Antigua and Barbuda Search and Rescue. He received a call at 10:41 PM to attend the anchorage complex reservoir area on Pigeon Point Road. He arrived at 10:50 PM and discovered a male lying in the road being comforted by another person. He noted two puncture wounds to the man's chest which he dressed and bandaged. They appeared to be gunshot wounds. During preparation for transport, the man's pulse stopped and CPR was administered. The man, who was later identified as Drew Gollan, was taken to hospital, where he died.
- [10]. Cpl. Andre Cumberbatch was on duty at the Dockyard Police Station on January 22, 2009 at 10:35 PM when he received information to proceed to Pigeon Point Main Road. He and another officer attended and saw a man down with blood on his chest, having difficulty breathing. He was being comforted by another male person. Within a few minutes, a paramedic arrived to treat and transport the injured man, who was later identified as Drew Gollan. Cpl. Cumberbatch found two spent shell casings and one damaged slug or bullet in the road nearby.
- [11]. Although the attending pathologist did not testify, the learned DPP referred to her report in his submissions, without objection from learned defence counsel, Mr. Benjamin. The report confirmed that an autopsy was performed on the body of Drew Gollan on January 28, 2009. Four penetrating wounds were discovered, two entry and two exit. The two entry wounds were to the chest. The cause of death was described as "massive internal haemorrhage due to penetrating injuries to the heart and left lung consequent on alleged gunshot wounds to the chest."
- [12]. The final witness who testified was Travis Valentine, a cousin of the defendant. He stated that on January 23, 2009 the defendant told him that he went on "on a move" to English Harbour. He got

out of his vehicle and confronted a white man. The man struck him with a bag. The defendant retaliated and shot the man. He said he got nothing from the man. The defendant said he stashed the gun and showed Mr. Valentine a bump on his forehead, apparently caused by the blow from the bag.

REPORT

- [13]. In response to an order from this court, a social investigation report was prepared in this case. P/O Henry presented the report. It described a 24 year old man who has been incarcerated at HM Prison for this offence since February 2, 2009.
- [14]. In describing the incident, the defendant candidly told P/O Henry that he was with friends, consuming alcohol and smoking marijuana. A decision was made to rob someone. The defendant was armed with a gun but had not intended to cause harm. The victim, however, became defensive and an altercation ensued, at which time the defendant shot and killed the victim, Drew Gollan.
- [15]. The defendant told P/O Henry that he is deeply remorseful and regrets the loss of life. If he could, he would apologize to the family of the deceased. The defendant has had difficulty coping with the constant memories of his actions and the fact that he took away another human life.
- [16]. Mr. Lindsay had a difficult childhood. He has never met his father. He was neglected by his mother, who was financially unable to provide for her children. Mr. Lindsay was raised by his grandmother.
- [17]. The defendant did not complete his secondary education, being expelled from school. He later enrolled in but did not complete the Youth Skills Program. The defendant spent several months at the Boys Training School, where he was described as respectful, with good potential for reform. To his credit, Mr. Lindsay won public speaking contests both locally and regionally while at the training school.
- [18]. The defendant was employed as a labourer about six months prior to this offence but lost his job when the company closed down.
- [19]. The defendant's grandmother and others referred to the poor choice of associates by the defendant as a factor contributing to his behavioural problems.

- [20]. Prison Officer Grant Briggs, who is in charge of the maximum security section at HM Prison where the defendant is housed, described positive lifestyle changes by the defendant over the time he has been remanded there. The defendant has befriended other inmates who appear serious about rehabilitation. The defendant has repeatedly expressed remorse for his actions in this offence and the positive things he would do with his life if given the opportunity.
- [21]. P/O Henry believed the defendant was genuine in his expressions of remorse for this offence. P/O Henry and prison officer Briggs believe the defendant has the potential for reform. P/O Henry said there is hope for the defendant.

SUBMISSIONS

- [22]. The learned DPP, Mr. Armstrong, referred to the facts given in evidence during the trial and the pathologist's report. The injuries listed in the report correspond to the testimony of the witnesses who heard and saw the shooting.
- [23]. Mr. Armstrong correctly described the crime as an aborted robbery and an unprovoked attack. It was perpetrated by the defendant, who was armed with a gun. The deceased, his female companion, and her child were visitors to Antigua and Barbuda. They were set upon while walking on a public road at night. The victim was callously struck down in plain view of his companions and the friends of the defendant. The shooting of the victim caused chest wounds that were not survivable. Drew Gollan was shot in the heart.
- [24]. The aggravating factors far outweigh the mitigating factors. Any discount that the defendant may seek from his plea of guilty must be carefully considered. Each case must be assessed on its own facts. This court should consider the timing of the plea of guilty in the context of the evidence, which was overwhelming. The court may vary the tariff accordingly. Any sentencing discount based on a plea of guilty is a rule of practice not a rule of law.
- [25]. The court must balance the remorse of the defendant with the bereavement of the victim's family. The interests of the defendant are to be balanced with those of society. A message of deterrence must be sent to would be offenders. The public's abhorrence of such a callous, unprovoked and senseless crime should be paramount.

- [26]. From the prisoner's dock the defendant stated that he was sorry and remorseful for what he had done. He said it was never his intention to murder Drew Gollan.
- [27]. Learned defence council, Mr. Benjamin, described the defendant as having grown up without family guidance and direction. His home life was dysfunctional. However, the defendant has potential for reform and Mr. Benjamin referred to the evidence of P/O Henry in that regard.
- [28]. Mr Benjamin emphasized the young age of the defendant and his expression of extreme remorse. The defendant had intended to enter an early plea of guilty and eventually he did so. This must be balanced with the nature of the crime. It was horrendous, unprovoked and took place in the presence of the victim's companions.
- [29]. Mr. Benjamin referred to a recent murder case in this jurisdiction, The Queen v. Brian Frederick Soerwidjo. The case was heard during the January 2011 Criminal Assizes. In that case, the defendant broke into a residence and was subsequently discovered by the returning homeowner. The defendant killed the victim most horribly, using a knife or cutlass. The wife of the victim returned home and discovered the gruesome scene. That case resulted in a plea of guilty before trial and a sentence of 16 years was imposed by the Hon. Justice Michel.
- [30]. Mr. Benjamin asked this court to consider that case and guideline cases such as Desmond Baptiste v. The Queen and discount the sentence in the case at bar accordingly.
- [31]. Mr. Armstrong, in reply, asked this court to distinguish the Soerwidjo case from the case at bar, based upon its facts.

THE LAW

- [32]. **The Offences Against The Person Act**, CAP 300 of the Laws of Antigua and Barbuda provides at section 2:

Whomsoever is convicted of murder shall suffer death as a felon.

The legislation has, however, been modified by case law. The death penalty is no longer a mandatory sentence for the crime of murder.

- [33]. In the combined case of Newton Spence v. The Queen, Criminal Appeal No. 20 of 1998 and Peter Hughes v. The Queen, Criminal Appeal No. 14 of 1997, the court held at paragraph 44 that “in order to be exercised in a rational and non-arbitrary manner, the sentencing discretion should be guided by legislative or judicially prescribed principles and standards, and should be subject to effective judicial review.....There should be a requirement for individual sentencing.”
- [34]. This individual approach to sentencing in murder cases was further explored in the cases of The Queen v. Rudy Monelle, ECSC Criminal Case No. 0015 of 2007, Antigua and Barbuda and Harry Wilson v. The Queen, ECSC Civil Appeal No. 30 of 2004. Those cases referred to a balanced approach to sentencing. The court should take into account the character, record and personal and individual circumstances of the defendant, as well as the facts and circumstances surrounding the commission of the offence, the nature and gravity of the offence, the design and execution of the offence and the possibility of reform and social re-adaptation of the defendant.
- [35]. The sentencing process is multi-faceted. Sentencing seeks to promote respect for the law and an orderly society. The offender and the offence are considered by the court. The classic principles of sentencing as set out in cases such as R. v. Sargent 60 Cr. App. R. 74 and in this jurisdiction the combined case of Desmond Baptiste v. The Queen ECSC Criminal Appeal No. 8 of 2003, must be considered. These principles include:
- a) retribution, the court must reflect society's abhorrence of particular types of crime through punishment of such unlawful conduct,
 - b) deterrence, specific to the offender and generally to likely offenders or persons who may be minded to commit similar offences,
 - c) prevention, to protect the public from offenders who persist in committing crimes by separating them from society,
 - d) rehabilitation, to engage offenders in activities designed to assist them in their reintegration into society.
- [36]. As the court strives to fashion the appropriate penalty in each case, consideration is given to both aggravating and mitigating factors. Rawlins, JA (as he then was) held in the case of Harry Wilson v. The Queen, *ibid* at paragraph 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.

ANALYSIS

- [37]. There is no doubt that this offence occurred as a result of an attempted robbery. The defendant was part of a group of young people who were joy riding in a rented van. They travelled about, enjoyed each other's company and consumed alcohol and marijuana. What set Sylvester Lindsay apart from his young friends, however, was the fact that he was armed with a hand gun. I find that to be a significantly aggravating factor in this case.
- [38]. When the van passed Drew Gollan, his lady friend, and her child, Mr. Lindsay saw his opportunity. He disembarked, approached Mr. Gollan and no doubt sought to relieve him of his money and valuables. Unfortunately for Mr. Gollan, he apparently did not cooperate with Mr. Lindsay and swung a bag at the defendant. At that point, Mr. Lindsay wantonly gunned down Mr. Gollan, firing not one but three shots at the unarmed man. Mr. Lindsay then left Mr Gollan as he lay dying in the street, while Mr. Gollan's companion clung to her baby and screamed into the night air. It was an act of cowardice. It was a brutal, heartless crime of significant violence. Mr. Lindsay displayed no emotion, no thought and no compunction, shooting Mr. Gollan through the heart. There was no chance of survival. While I am satisfied that this killing was not planned or premeditated, I cannot ignore the fact that the defendant set out to rob the victim and was willing to resort to violence, being armed with a gun, to fulfill that goal.
- [39]. This court considers the issue of deterrence to be extremely important in this case. The use of hand guns is an increasing problem in Antigua and Barbuda. A clear message must be sent to deter others who would consider carrying and using a hand gun in any fashion whatsoever. Hand guns are not used for hunting. They have one purpose and that is to kill humans. The proliferation of hand guns in this community is a significant concern to this court. A message must be sent that the use of guns in the commission of crime will not be tolerated.

- [40]. The public want to feel safe in this community. Citizens and visitors want to be reassured that they can walk the streets of St. John's, English Harbour, and all communities in Antigua and Barbuda, secure in the knowledge that they will not be accosted, set upon, robbed and shot.
- [41]. This court has noted that the defendant comes before it with no prior criminal record. The court also notes the relative youth of the defendant. He is 24 years old. Sentencing principles direct the court to consider both of these points.
- [42]. However, as was noted in the case of Desmond Baptiste v. The Queen, *ibid* at paragraph 29, while the court considers "the fact that the offender was committing crime for the first time...It must be stressed though that the more serious the offence, the less relevant will be this circumstance."
- [43]. The court in the same case similarly addressed the issue of the age of an offender, stating at paragraph 30 that for young offenders, the court should give increased weight to the prospects of rehabilitation and "where imprisonment is required, the duration of incarceration should also take such factors into account." However, the court was careful to also note that "as with first time offenders, the more serious the offence, the less relevant will be these circumstances."
- [44]. Sylvester Lindsay is a young man with no prior criminal record. He comes from an underprivileged background. He has expressed what appears to be sincere regret and remorse for his actions. Prison authorities and probation staff have said that Mr. Lindsay has the potential for reform and rehabilitation. All indications are that the defendant is making positive strides to improve his situation while incarcerated. His past success in public speaking indicates he has the ability to achieve. However, I must balance this with the stark nature of this most serious offence.
- [45]. I also consider the issue of the guilty plea in this case. Learned counsel have addressed the court on that issue and reference has been made to the general principle of one third reduction on sentence, consequent upon a guilty plea. This court was referred to the case of Desmond Baptiste v. The Queen, *ibid*. The court in that case favourably referred to this English concept of sentence reduction. Reference was made to the case of R. v. Paul Edward Buffrey (1993) 14 Cr. App. R. (S).
- [46]. Guilty pleas allow the precious resources of the criminal justice system to be redirected to other deserving cases. Witnesses and victims are spared the stress and pressure of a trial and the

defendant accepts responsibility for his or her actions. However, as the courts have pointed out, the timing of the plea is significant. In the Baptiste case, it was held at paragraph 28:

Clearly, the earlier the defendant pleads guilty, the greater the likelihood that he will receive the full discount permissible. Conversely, a plea of guilty late in the proceedings may not yield much of a discount.

[47]. Learned defence counsel referred this court to the Soerwidjo case and asked that I be guided by it. I am satisfied, however, that the Soerwidjo case can be distinguished from the case at bar. On their facts, the cases differ. The Soerwidjo case involved a housebreaking where the victim returned and surprised the intruder. In the case at bar, Mr. Lindsay deliberately confronted the victim while armed with a hand gun. Although I am satisfied that Mr. Lindsay did not set out with an intention of killing Mr. Gollan, he never the less intended to commit an armed robbery. During the course of that robbery, Mr. Gollan was shot and killed.

[48]. As to the guilty pleas, in the Soerwidjo case, a plea was entered before the trial commenced and evidence was taken. The corresponding reduction in sentence was therefore understandable and appropriate. In the case at bar, the trial had commenced and several witnesses had been called and cross examined before the plea was entered. In other words, evidence had been called and tested. That evidence was overwhelming. The timing of the guilty plea by Mr. Lindsay must, therefore, receive significantly less consideration than the plea in the Soerwidjo case.

[49]. I have considered all of the facts, circumstances and issues in this case, in light of the sentencing guidelines found in the case law. I have taken into account the aggravating and mitigating factors, in conjunction with the classic sentencing principles of retribution, deterrence, prevention and rehabilitation. I am satisfied that while Mr. Lindsay committed a brutal and cold blooded crime in taking the life of Drew Gollan, he does not pose such a danger to society that he should receive an indeterminate sentence. Mr. Lindsay appears genuinely remorseful and is a candidate for reform and rehabilitation.

[50]. The facts of this case, however, are grim. I am satisfied that Mr. Lindsay should receive significantly less than the one third sentencing credit for pleading guilty. The evidence was overwhelming and the plea was entered well into the trial. By that time, the offence had essentially already been proven. His age and lack of criminal record are overshadowed by the serious nature

of this offence. A robbery gone awry and a human life lost through the use of a hand gun. A message of general deterrence must be sent and the abhorrence of this community to a crime such as this must be manifestly demonstrated.

[51]. Mr. Lindsay has already served 3 years in prison for this offence and he will receive credit for that. The record will reflect, therefore, three years' time served.

SENTENCE

[52]. For all of the reasons noted, and in addition to the time served, this court hereby sentences the defendant as follows:

For the murder of Drew Gollan, Sylvester Lindsay is sentenced to 22 years imprisonment.

Richard G. Floyd

High Court Judge

