EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

HCRAP 2009/016

RUDOLPH LEWIS

Appellant

and

THE QUEEN

Respondent

Before:

The Hon. Mde. Ola Mae Edwards — Justice of Appeal
The Hon. Mr. Davidson Kelvin Baptiste — Justice of Appeal
The Hon. Mr. Don Mitchell — Justice of Appeal [Ag.]

Appearances:

Mr. Ronald Marks for the Appellant
Mr. Colin Williams, Director of Public Prosecutions, with
Mr. Colin John and Ms. Sejilla McDowall for the Respondent

2011: June 7;
2012: April 16.

Criminal appeal against sentence – Murder – Guilty plea entered at first opportunity – Learned trial judge refusing to accept appellant's guilty plea and entering plea of not guilty instead on his behalf – Whether sentence imposed excessive and reflected early guilty plea – Whether murder being a crime of passion to be taken into account

On 22nd March 2008, the appellant was indicted for the murder of his 21 year old common law wife. He had stabbed her 21 times with a penknife because he had suspected on numerous occasions that she had been unfaithful to him. The appellant, who was legally represented at his arraignment, pleaded guilty to the offence of murder when the charge was read to him. The learned trial judge refused to accept his plea however, and entered a plea of not guilty on his behalf. Neither the appellant's counsel nor the Director of Public Prosecutions objected to this.

After a full trial during which the defence tendered no evidence and called no witnesses, the learned judge, at the sentencing phase, sentenced the appellant to life imprisonment. On appeal against sentence, the appellant contended that the punishment was excessive and ought to be reduced to a term of years, having regard to the fact that he had pleaded guilty at the first opportunity and his plea was refused. He argued that he went through a trial process through no

fault of his own, and the sentence imposed did not reflect that he benefited from his guilty plea and the fact that the murder was a crime of passion.

Held: allowing the appeal against sentence, setting aside the sentence of life imprisonment and substituting a sentence of 25 years imprisonment to run from the date of the appellant's arrest, that:

1. Provided that a defendant's plea of guilty to a charge of murder is unequivocal and the proper procedure is followed, a High Court judge may accept it. The trial judge has the discretion to accept a defendant's guilty plea even where the Director of Public Prosecutions has served on the defendant a notice of his intention to seek the death penalty upon conviction.

2. Before a defendant's guilty plea is accepted when arraigned on an indictment for murder, the trial judge is under a duty to ensure that: (a) the defendant has competent legal representation; (b) the defendant has been examined by a medical officer in order to determine whether he is fit to plead; (c) the medical officer attends court and testifies as to his opinion concerning the defendant's fitness to plead; (d) the defendant has not been coerced by his counsel or anyone else to plead guilty and no one has promised him anything to plead guilty; (e) the defendant understands the nature of the offence, the elements of the offence, and that he has the right to plead not guilty, the right to be tried by a jury, and the right to state his defence, give evidence, remain silent, call witnesses, and address the jury; (f) the defendant is made aware of the sentencing process and that in determining sentence, the court has an obligation to apply the sentencing guidelines, consider a psychiatrist and social inquiry report, his antecedents and other sentencing factors; and (g) the defendant is made aware of the maximum possible penalty, as well as the minimum possible penalty.

3. It is unnecessary to empanel a jury to try the issue of whether or not the defendant is fit to plead. The procedure for determining fitness to plead under section 115(3) of the Criminal Procedure Code is not applicable.

   James Robert Vent v R (1936) 25 Cr. App. R. 55 applied; section 115(3) of the **Criminal Procedure Code** Cap. 172, Revised Laws of Saint Vincent and the Grenadines 2009 cited.

4. The learned judge failed to take into account that the appellant acted under circumstances of domestic emotional stress which is a significant mitigating factor.

   D. A. Thomas' treatise **Principles of Sentencing: The Sentencing Policy of the Court of Appeal Criminal Division** considered and applied.

5. The appellant had unusually strong mitigating factors in his favour and the sentence of life imprisonment did not sufficiently take into account his personal circumstances leading up to the offence. These personal circumstances which the learned judge omitted to consider would justify the Court abandoning or placing less emphasis on the objective of deterrence.

   Mervyn Moise v The Queen Saint Lucia Criminal Appeal No. 8 of 2003 (delivered 15th July 2005, unreported) followed.

JUDGMENT

[1] **EDWARDS, J.A.:** The appellant was indicted for the murder of his 21 year old common law wife on 22nd March 2008. She was the mother of his two children from a 3 year turbulent relationship, marred by their infidelity and the jealousy of the appellant. The deceased left the appellant's home with their youngest child the week before her death to stay at her sister's home without the appellant's approval. The appellant, who had received news that the deceased was seen with a man in town, lured her home by pretending that their other child was sick and in hospital and the doctor needed to see her. The appellant had in fact previously taken this child to his father's home to stay on the morning of the murder, pretending to his father that the deceased was by a neighbour.

[2] Under the guise that they needed to get clothes from their home for their supposedly sick child, the appellant tricked the deceased into returning home with him. The appellant accosted her at their home, and stabbed her 21 times with his pen knife. The fatal injury was a 10 cm wound to her neck which cut her external ceratoid artery and jugular vein, from which she died within minutes of receiving this injury. The appellant fled from his house, eventually gave himself up to the police, and subsequently took them to his home. He confessed to killing her in two caution statements he gave the police on the same day of the murder.

[3] The appellant has appealed against the sentence of life imprisonment which the learned trial judge imposed after the jury convicted him of murder.

Relevant Trial Background Facts

[4] Prior to the appellant's arraignment at the 2009 Trinity Assizes, the Director of Public Prosecutions, Mr. Colin Williams ("the DPP") served notice on the appellant that the Crown would seek the ultimate sentence of death as the penalty for his offence of murder. The appellant was then represented by learned counsel Mr. Grant Connell by legal aid assignment. The appellant pleaded guilty to the offence of murder when the charge was read to him. The learned judge refused to accept his plea and entered a not guilty plea on his behalf without any objection from his counsel or the DPP.

[5] His trial commenced on 14th May 2009. The jury heard the evidence adduced by the Crown. There was no challenge to the prosecution's 18 witnesses except for the cross-examination of the investigating officer Sergeant La Borde who obtained two caution statements from the appellant on 22nd March 2008. Sergeant La Borde admitted that because of the nature of the crime the appellant was taken to a psychiatrist who issued a report. This report was not tendered in evidence by the Crown. Neither was the psychiatrist called to testify.

[6] On the third day of the trial after the Crown had closed its case, the appellant's counsel, Mr. Grant Connell, immediately stated: "My Lord, we would not be giving evidence". I must note in passing that the appellant was not informed "of his right to address the court, either personally or by his counsel, … to give evidence on oath on his own behalf explaining to him that if he does so he will be liable to cross-examination, or to remain silent, and to call witnesses in his defence" as section 195(2) of the **Criminal Procedure Code**[1] mandates. Neither did the court "require him or his counsel to state whether it is intended to call any witnesses as to fact …" as that section requires in all cases. Such a lapse, ought not to occur in the criminal trial process. The court heard the addresses from the DPP and Mr. Grant Connell. The jury retired after the learned trial judge's summation. After 2 hours and 15 minutes of deliberation, the jury returned a verdict of guilty of murder.

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[1] Cap. 172, Revised Laws of Saint Vincent and the Grenadines 2009.

[7] At the sentencing phase on 5th and 19th June 2009, the learned judge heard the evidence of Dr. Amrie Morris-Patterson, registered medical doctor specialising in psychiatry who examined the appellant on 25th March 2008 and 28th May 2009. The judge also had the benefit of a Social Inquiry Report from the witness Ms. Camille Mc Intosh. The DPP, on the authority of the Privy Council decision in **Daniel Dick Trimmingham v The Queen**,[2] withdrew his death penalty notice. After hearing submissions from the DPP and Mr. Grant Connell, the learned judge, on 10th July 2009, sentenced the appellant to life imprisonment.

The Grounds of Appeal and Submissions

[8] The appellant's Notice of Appeal was prepared and filed by him without the assistance of a legal practitioner. His grounds of appeal and his case are as follows:

> "(1) The Appellant is asking that the life sentence [be] replaced[d] [with] a reduced sentence.
> (2) The Appellant pleaded guilty at the first opportunity and did not waste the Court's time.
> (3) The appellant is a first time offender and showed remorse for his error.
> (4) The punishment is too excessive sentence in all of the circumstances."

[9] At the hearing of the appeal, his counsel, Mr. Ronald Marks (by legal aid assignment), indicated that he was arguing only one point and sought our leave to make oral submissions on this one point without any written skeletal arguments. He contended that the sentence should be reduced to a term of years to reflect the fact that he had pleaded guilty and that plea was refused. The appellant went through a trial process through no fault of his, he argued, and the sentence of life imprisonment does not reflect that he benefited from this guilty plea and the fact that it was a crime of passion. Learned counsel Mr. Marks submitted further that there was no legal impediment to accepting the guilty plea where capital punishment is no longer mandatory.

[10] Both Mr. Marks and the DPP were directed to supplement their oral submissions at the hearing with subsequent written submissions addressing this contention. We received the

[2] [2009] UKPC 25.

learned DPP's Substituted Skeleton Arguments on 14th July 2011 and Mr. Marks' written submissions on 5th September 2011.

[11] In his written submissions, Mr. Marks submitted that at the time the appellant proffered his guilty plea, the law which ought to have guided the judge in the absence of an equivocal plea of guilty was sections 184 and 186(1) of the **Criminal Procedure Code** which state:

> "184. When the accused is called upon to plead, he may plead either guilty or not guilty, or such other special pleas as are provided in this Code.
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> 186. (1) If upon arraignment the accused pleads guilty, he may be convicted thereon.
> (2) If upon arraignment the accused pleads not guilty, or if a plea of not guilty is entered upon his behalf in accordance with the provisions of section 185, the court shall proceed to try the case.
> (3) Every plea, including any special plea, shall be entered by the Registrar, or other proper officer of the court, on the back of the indictment or on a sheet of paper annexed thereto."

[12] Mr. Marks referred also to section 185 of the **Criminal Procedure Code** which authorises the Court to intervene and enter a plea dictated by the judge where the accused upon being arraigned stands mute with malice, or cannot answer directly because of reason of infirmity.

[13] He referred further to section 115 of the **Criminal Procedure Code** which empowers the court to empanel a jury and inquire into the fact of any unsoundness of mind where it appears that the accused is incapable of making his defence because of an unsound mind.

[14] Mr. Marks submitted that none of these provisions were applicable to the appellant at the time of his arraignment and so the learned judge should have convicted the appellant in accordance with section 186(1) and proceeded to the sentencing phase. He identified the origin of the practice in this jurisdiction which exists in the old maxim ***propria manu*** (a man cannot suffer death by his own hand) when capital punishment was mandatory on a conviction for murder and treason. He submitted that since it is not supported by any legislation, and capital punishment is no longer mandatory, the judge erred in enforcing that old practice.

[15] The learned DPP in his refreshing and scholarly submissions examined the history of this practice and the approach adopted by the courts in various jurisdictions including England, some States in the United States of America and Trinidad and Tobago. He referred us to the decisions in the English cases **James Robert Vent v R**[3] and **Emma Last and Others v R**[4] and an American Commentary published in the Albany Law Review.

[16] In **James Vent** the appellant who was unrepresented, pleaded guilty to a charge of murder for which the penalty was then automatic death. The trial judge, before accepting the plea asked counsel to interview the appellant and explain the law and nature of the offence, the effect of the plea and its consequences to him. Counsel interviewed the appellant and raised with the judge the issue as to whether the appellant was fit to plead. The judge caused the senior medical officer of the prison to examine the appellant and give his opinion as to whether the appellant was fit to plead. The doctor opined that the appellant was fit to plead. The appellant, on being re-pleaded, again replied that he was guilty. He was sentenced to death. It was held that the procedure that was followed was perfectly proper and that there was, in the circumstances, no need to empanel a jury to try the issue as to whether the appellant was fit to plead.

[17] In the more recent cases of **Emma Last and Others** the court accepted guilty pleas on the murder indictment for each appellant in 5 different cases. Lord Chief Justice the Hon. Mr. Justice Silber observed in his judgment[5] that:

> "Until recently, it was rare for a defendant to plead guilty to murder. This may have been a throwback to a time when the penalty for murder was death. In that situation, the legal profession regarded it as inappropriate to allow a defendant to plead guilty."

[18] Still yet, in the United States of America, a deputy capital defender of the New York State Capital Office, Mr. Barry J. Fisher, in his article entitled **Judicial Suicide or Constitutional**

[3] (1936) 25 Cr. App. R. 55.
[4] [2005] EWCA Crim 106.
[5] At para. 1.

Autonomy? A Capital Defendant's Right To Plead Guilty[6] criticised the decision taken in New York to join Arkansas and Louisiana in preventing a defendant from pleading guilty to murder when faced with the death penalty. In this article he observed[7] that at common law, a defendant of competent understanding, duly enlightened, had the right to plead guilty to a capital crime instead of denying the charge. In the case of crimes punishable by death guilty pleas were entered, although rather infrequently. In England during common law times, judges were reluctant to accept a guilty plea in a capital case, and often encouraged defendants to rethink such a course of action. As Blackstone observed, a court was "usually very backward in receiving and recording such confession, out of tenderness to the life of the subject; and … [would] generally advise the prisoner to retract it, and plead to the indictment." Such hesitancy, however, stemmed from concerns about coerced, uninformed, or otherwise involuntary guilty pleas and the mandatory nature of the death penalty for many felony offences at that time.

[19] Among the numerous American cases in which defendants, after pleading guilty to capital murder, have been executed in the United States of America are: **Commonwealth v Battis**[8] and **Hallinger v Davis**.[9]

[20] Nearer home, in **Habib (Simon) v The State**[10] the Court of Appeal in Trinidad and Tobago held that if a person accused of a capital charge pleads guilty, the trial judge must satisfy himself that the accused is fit to plead before he accepts the plea even when the accused is represented. Bernard C.J. stated:

> "If on arraignment on a charge of murder an accused pleads 'Guilty', that plea is, as a general rule, a good plea. In this jurisdiction the penalty for that plea if accepted is, as we know, death by hanging. A person may plead 'Guilty' to a capital charge for several reasons. He may do so out of sheer bravado; or he may

[6] Albany Law Review, Vol. 65, pp. 181-203 (16/10/01).
[7] At. p. 183.
[8] 1 Mass. (1 Will) 95 (1804): The defendant insisted on pleading guilty to capital murder despite warnings by the Supreme Judicial Court of Massachusetts of the consequences of his plea, and that he was under no legal or moral obligation to plead guilty, and he had a right to deny the several charges and put the government to prove them. The Court determined that he was sane and his plea was not the product of tampering or promises so his plea was accepted and he was eventually executed.
[9] 146 U.S. 314 (1892): The United States Supreme Court affirmed the death sentence on a male defendant who voluntarily pleaded guilty to capital murder.
[10] (1989) 43 WIR 391 at 393.

do so because he truly wishes to confess his crime; or he may do so at a time when he is unfit to plead.

"In order to ensure that an accused person on a capital charge who is unrepresented and who seeks to or pleads 'Guilty' is doing so (or has done so) genuinely and when his state of mind is such that it cannot be said that he is ignorant of what is going on and/or of the consequences of such a plea, the trial judge is required to take a particular stance. He must, whether or not the accused is represented, take steps to ensure that he is fit to plead to the charge at the time of his arraignment."

[21] The Court overturned the conviction in **Habib** because at the time the appellant pleaded guilty he was not represented by counsel, and the trial judge failed to ascertain the appellant's mental state. Bernard C.J. stated[11] that:

"As the record shows in this case, quite apart from the fact that he was not represented by an attorney as he should have been, one cannot say that at the time the appellant had been arraigned and the indictment had been read to him that he was in fact fit to plead. As we said, there was a fundamental breach of procedure in this case. The breach went to the root of the matter and was such as to render the trial of the appellant a nullity. Hence the reason for our quashing of the conviction and sentence and our order that there be a retrial."

[22] I endorse the observations of Mr. Barry Fisher in his article[12] where he stated that the protection of the right to plead guilty offers important and legitimate benefits to capital defendants, and I might add other defendants charged with murder. This includes autonomy in deciding whether or not to exercise their trial rights. The choice to plead guilty spares such defendants and their family from the spectacle and ordeal of protracted pre-trial and trial proceedings and permits judges to focus their attention on punishment and the defendants' demonstrated acceptance of responsibility. Additionally, a truthful formal and public acknowledgment of guilt is a virtue in itself.

[23] Having considered the relevant law and the helpful submissions of the DPP and Mr. Marks, I am of the view that the applicable provisions in the **Criminal Procedure Code** and the common law of England do not prohibit a High Court judge from accepting a plea of guilty to a charge of murder, provided the plea is unequivocal and the proper procedure

[11] At p. 394.
[12] At p. 201.

is followed. The trial judge has the discretion to accept such a guilty plea even where the DPP serves a Death Penalty Notice of his intention to seek the death penalty on conviction of the defendant.

[24] The principles that may be distilled from the law previously reviewed and **Archbold Criminal Pleading, Evidence & Practice**[13] regarding the proper procedure are:

(a) The trial judge has the duty to ensure that the defendant has competent legal representation before he is arraigned and the indictment is read to the defendant.

(b) Prior to the arraignment of the defendant, the trial judge should cause the defendant to be examined by a medical officer with a view to determining the defendant's fitness to plead. The procedure for determining fitness to plead under section 115(3) of the **Criminal Procedure Code** <u>is not applicable</u>. On the authority of **James Vent** it is unnecessary to empanel a jury to try the issue of whether or not the defendant is fit to plead in such circumstances.

(c) The medical officer should attend court and testify as to his opinion concerning the defendant's fitness to plead.

(d) The defendant's guilty plea must be voluntary so it is desirable that the trial judge ensure that the defendant has not been coerced by his counsel or anyone else to plead guilty and that no one has promised him anything to plead guilty.

(e) The defendant's guilty plea should be unequivocal in the sense that he has full knowledge of the nature and extent of his admission. It is therefore the duty of the judge to ensure that through his counsel, he understands the nature of the offence, the elements of the offence, and that he has the right to plead not guilty, the right to a jury trial and the right to state his defence, give evidence, remain silent, call witnesses, and address the jury.

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[13] 41st Ed. at pp. 231-231, paras. 4-57 and 4-58.

(f) The defendant should be made aware of the sentencing process and that in determining sentence, the court has an obligation to apply the sentencing-guidelines, consider a psychiatrist and social inquiry report, his antecedents and other sentencing factors.

(g) It may prove helpful also for the defendant to be aware of the maximum possible penalty, and the minimum possible penalty.

[25] These principles are recommended as prerequisites to and guidelines for the trial judge's acceptance of a defendant's guilty plea when arraigned on an indictment for murder.

[26] Had the learned trial judge accepted the appellant's guilty plea without adhering to established procedure, as Bernard C:J. opined in **Habib**, the trial of the appellant would have been a nullity. Regrettably, neither Mr. Grant Connell nor the DPP rendered any assistance to the court on the law and applicable procedure.

[27] In light of the psychiatric report and evidence from Dr. Morris-Patterson who had examined the appellant before he was arraigned, we now know that at the date he was arraigned he would have been fit to plead.

[28] It is the contention of the learned DPP that the trial judge did treat the appellant as a defendant who had pleaded guilty. At pages 234 to 235 of the Record, the learned trial judge stated:

> "I note from the onset that the psychiatric report and the social inquiry reports strongly favour the prisoner at the bar. It is evident especially from those two reports that the prisoner has had a very rough upbringing with abandonment by his mother at a tender age, lack of basic education, and a plethora of menial jobs to eke out a living featuring very prominently.
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> "What stands out in all this in favour of the prisoner is the fact that despite these odds against him in the tender moments in his life, he has remained a virgin to the law, and was regarded as a quiet, well mannered, respectful individual in his community. In fact, according to the social inquiry report his community expressed shock that he could have committed this heinous crime of stabbing his common law wife not once but twenty-one times.

> "Again the accused if he had the opportunity (but for the nature of our legal process) would have pleaded guilty at the first instance. In fact he so indicated at his arraignment. Unfortunately the process enforced a trial but which was not contested in any way by the prisoner. For this he deserves some credit.
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> "What is so aggravating about this case however, is the premeditated nature of the commission of this crime including the level of deceit involved in luring the deceased who was his common law wife from Evesham where she was spending time with her sister, through Kingstown and up to Questelles where they lived where he proceeded to stab her twenty-one times in the presence of their three year old daughter, all because he had suspected her on numerous occasions of being unfaithful to him. According to him he 'tripped' off in his mind and this crime was committed out of emotion as he lost his self control.
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> "It is my view that this was a well calculated heinous crime, but according to precedent not falling amongst the cases one would describe as the 'rarest of the rare', requiring the ultimate penalty of death. But considering all the factors in this case and the brutal nature of the death of the deceased in the presence of a three year old child and to the hearing of other young children outside the prisoner's house who knew something unusual was happening and raised the alarm, and who would no doubt be traumatized by this incident for some time, it is my view that this prisoner deserves a sentence that would serve as punishment, deterrence and maybe a chance to rehabilitate himself, but with the ultimate aim of protecting society. This prisoner deserves a long period of incarceration and as such I order that he be sentence to a term of imprisonment for life."

[29] The DPP reminded us that: "Sentencing in murder cases is at the discretion of the judge, who may impose such sentence as the circumstances of the crime and the aggravating and mitigating factors demand. Judges usually try to be consistent and are entitled to consider similar cases. This court would not substitute its opinion for the discretion of the sentencing court as long as the sentence is not outside of the generous ambit within which discretion could have been exercised."[14]

[30] There was no evidence from the psychiatrist and the social inquiry report that the appellant, on the basis of this murder and his previous history and personality, was a social nuisance, highly likely to commit grave offences of violence in the future. There was therefore no evidence to justify the learned judge's apparent approach, treating the

[14] Per Rawlins J.A. (as he then was) at para. 9 of his judgment in Nardis Maynard v The Queen, Saint Christopher and Nevis Criminal Appeal No. 12 of 2004 (delivered 22nd May 2006, unreported).

appellant as if he was a danger to society and there was the need to protect the society from him. This was an error the judge made in my opinion.

[31] The evidence clearly showed that this was a murder arising out of a deterioration of emotional relationships. There was a lengthy history of discord and mistrust between the appellant and the deceased. The members of his community regarded his crime as uncharacteristic of him. The appellant acted under circumstances of domestic emotional stress which would not measure up to legal provocation, having regard to his level of premeditation, deceit and planning in luring the deceased to the house.

[32] D. A. Thomas in his renowned treatise **Principles of Sentencing: The Sentencing Policy of the Court of Appeal Criminal Division**[15] identifies domestic or emotional stress as significant mitigating factors. He states that:

> "A frequent explanation of uncharacteristic offences is that they result from acute emotional stress. The most common example is the offence of violence committed against wife or husband, or a third party who has become involved with one of them as a result of a deteriorating marriage. In such cases the circumstances which precipitate the violent act are usually treated as significant mitigating factors."

The learned judge did not take this significant mitigating factor into account at all.

[33] The appellant had unusually strong mitigating factors in his favour. In my view the sentence of life imprisonment did not sufficiently take into account the personal circumstances leading up to the offence. "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 Judge may accord greater importance to the circumstances, which relate to the commission of the

[15] 2nd Ed. at p. 207, captioned "Domestic or Emotional Stress".

offence. However, the relative importance of these factors may vary according to the overall circumstances of each case."[16]

[34] The personal circumstances of the appellant which the learned judge omitted to consider would justify the court abandoning or placing less emphasis on the objective of deterrence in my view. Because the learned judge erred in the exercise of his discretion it is our duty to consider afresh and exercise our own deliberate judgment on the sentence that this murder required.

[35] There was a significant degree of deliberation as would justify a sentence at the upper end. Bearing in mind that the bench mark or upper limits for the cases where murder is reduced to manslaughter is 15 years,[17] a sentence of 25 years imprisonment would reflect the appellant's culpability for this heinous crime of murder in my view, taking into account the errors of the learned judge and the mitigating factors including his failed guilty plea.

[36] I would allow the appeal against sentence, set aside the sentence of life imprisonment and substitute a sentence of 25 years imprisonment to run from 22nd March 2008, the date of his arrest.

Ola Mae Edwards
Justice of Appeal

I concur.

Davidson Kelvin Baptiste
Justice of Appeal

I concur.

Don Mitchell
Justice of Appeal [Ag.]

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[16] Per Rawlins J.A. [Ag.] (as he then was) in Mervyn Moise v The Queen, Saint Lucia Criminal Appeal No. 8 of 2003 (delivered 15th July 2005, unreported) at paras. 18 and 19.

[17] See Tench v R (1992) 41 WIR 103; Bertram Abraham v The Queen (Saint Vincent and the Grenadines Criminal Appeal No. 12 of 1995 (delivered 12th February 1996, unreported); James Baptiste v The Queen, Saint Lucia Criminal Appeal No. 19 of 1994 (delivered 12th February 1996, unreported); Alphonse (Denis) v R (1996) 52 WIR 179.