

EASTERN CARIBBEAN SUPREME COURT

COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

DOMHCR 2012/0024

BETWEEN

THE STATE

and

EDWARD GREEN

Appearances:

Mr. Keith Scotland with him Miss Sherma Dalrymple for the State

Mr. Peter Edward Allyene, Mr. Darius Jones and Miss Vincia Augiste for the
Defendant

2013: July 5th

October 18th

Ruling and Sentencing remarks

[1] **STEPHENSON, J:** On the 17th January 2013, the Defendant was indicted on a charge of murder for that he on the 11th day of June 2008, at Morne Daniel in the Parish of St Paul, in the Commonwealth of Dominica did murder Damien Dorival contrary to law. The Defendant was not required to plea to this at his arraignment and a jury was duly empanelled and the matter proceeded to trial.

[2] During the course of the trial, there was a single application which merited extended consideration and ruling. I made an oral ruling in the matter and promised to render a brief written ruling for future guidance which of course is subject to appellate correction and I do so now.

[3] This judgment comprises two parts:

Part 1 – The Ruling on Application by Defence Counsel to recall a prosecution witness;

Part 2 – Sentencing Remarks

Ruling on Application by Defence Counsel to recall a Prosecution Witness:

[4] Learned Counsel for the Defendant, Mr. Peter Alleyne, applied for one of the witnesses for the prosecution Ernest Nesty to be recalled to the witness stand for further questions based on information which had just come to the attention of Defence Counsel and which was important to the Defendant's case.

[5] Learned Counsel for the Prosecution Mr. Keith Scotland raised concerns as to the timing of the information coming to Counsel's hand in view of the fact that so many years had elapsed since the incident giving rise to the case at bar. Mr. Scotland noted that Counsel for the Defence had been involved in the matter for many years now and should have known of this. It should be noted that the Court has some concern in this regard too.

[6] It is noted that Learned Counsel, Mr. Peter Alleyne, has already asked a question in cross examination of the lead investigator Inspector Laurent in the matter regarding this information who has denied that any such information (that is the information which Counsel said was ever brought to his attention before). Mr. Alleyne has not informed the court in open court or in Chambers as to the exact source of his information and the court is concerned that the foundation for his application is somewhat slender and tenuous.

[7] There is no doubt in my mind that the trial judge has the discretion to allow a witness to be recalled to give evidence at any time during the trial prior to the conclusion of the summing up and to allow the putting of such questions to them as the exigencies of justice require, which discretion will not be interfered with by Court of Appeal unless it appears that an injustice has thereby resulted¹.

[8] *A trial must be fair in every respect; the refusal to allow the recall of the witnesses can in some circumstances amount to a miscarriage of justice and a breach of a person's fundamental rights to a free and fair trial.*

[9] I am required to examine the justice of the request in the case as it affects all the parties concerned and exercise my discretion only after taking into account all the circumstances of the case.

[10] This I have done and even though I have my concerns about the slender nature of the stability of Counsel for the Defence's information I am going to exercise my discretion and allow the witness to be recalled and Counsel is reminded that he is restricted to the questions submitted to the court in the course of his application.

Sentencing Remarks

[11] The Defendant was convicted on the said indictment by a jury of his peers and is now before the court for sentencing.

The Law

[12] Section 2 of The Offences Against The Persons Act² states that:

"Any person who is convicted of murder shall suffer the penalty of death"

¹ Archibald's 43rd Edition Volume 1 page 549

² Chapter 10:31 of the Revised Laws of the Commonwealth of Dominica (1990)

[13]The automatic imposition of the death penalty is no longer as this has been deemed unconstitutional.³ As the sentencing Judge upon conviction on the offence of murder, I am enjoined to conduct a sentencing hearing and to determine the appropriate sentence to impose on the Defendant. The Court is therefore now clothed with discretion to impose a sentence other than death for this offence.

[14]The Prosecution has informed the Court that they do not intend to seek the death sentence in the case at bar, hence it does not arise and as such this court is bound to impose a lesser sentence on the Defendant Edward Green.

[15]As the sentencing Judge I am obliged to take into consideration the applicable principles of sentencing as was set out in the case of **R-v-Sargeant**⁴, which were identified and adopted by Byron CJ in the case of **Desmond Baptiste –v- R**⁵. The principles which were adopted by Byron CJ are “retribution, deterrence (both to the offender and potential offenders), prevention and rehabilitation.”

[16]Being faithful to the principles of sentencing the other factors which I must also take into consideration are the character of the Defendant, the nature and gravity of the offence, the design, and the manner of the execution of the offence, the subjective factors which may have influenced the defendant’s conduct and the degree of the Defendant’s culpability.⁶

[17]I must also consider and weigh the mitigating and aggravating factors. I will consider the particular facts of the case so as to determine the appropriate sentence for the defendant.

³Peter Hughes and Newton Spence –v- The Queen Criminal Appeal No. 20 of 1998 and 14 of 1997 (St Vincent)

⁴60 Criminal App. R. 74

⁵Criminal Appeal no. 8 of 2003 (St Vincent & The Grenadines)

⁶Re: The Queen –v-Rudy Monelle Case no 15 of 2007 of Antigua and Barbuda

[18]The bizarre facts of the case as presented by the Prosecution and as accepted by the Jury were:

1. The Deceased Damian Dorival was a tenant of the Defendant's house located at Morne Daniel. That the said Damian Dorival was in arrears of rent and that he had previous confrontations with the Defendant about his continued late and or none payment of rent and during those confrontations the Defendant was said to have threatened the deceased.
2. The Defendant told persons that the Deceased was owing him rent and that he would shoot him in the head and cut off his head and throw his body one way and his head another.
3. On the night of 11th June 2008, at Morne Danie the Defendant Edward Green armed with a rifle shot Damien Dorival as he exited his apartment, and with the assistance of his son he loaded the body onto a vehicle which was driven previously by the Deceased, and he the Defendant, took the body away from Morne Daniel.
4. The decapitated body of Damien Dorival was on the 12th June 2008, found by a young school boy at the site of a rubbish dump in Elmshall in the vicinity of the University of the West Indies Open Campus. The deceased's head was subsequently found by children playing on the banks of the Cophall River in the vicinity of Palm Grove.
5. A postmortem was later conducted on the body and the cause of death was recorded as "gunshot injury to the head".
6. The vehicle in which the Defendant placed the body of Damien Dorival and which he drove off from his premises at Morne Daniel was also later found at the corner of Virgin Lane and Independence Street in Roseau with blood spatter evidence therein.
7. The Defendant, Mr. Edward Green was seen by various persons during the night of the 11th June 2008 and in the early hours of the morning of the 12th June 2008 as he traversed from Independence Street to Pottersville where he was seen on the side of the road attempting to secure a ride from passersby.

8. Reports were made to the police as to what took place at Morne Daniel on the fateful night of the 11th June 2008 and after a thorough investigation of the matter and the recording of many statements from diverse witnesses the Defendant was arrested and charged for the murder of Damien Dorival.
9. The Defendant in his defence insisted that he was not the person seen by the numerous witnesses that night. His contention was ,that he was in his bed in Morne Daniel when these persons claimed they saw him. This was clearly rejected by the jury.

The Pre-Sentence, Medical and Psychiatric Report:

[19]The Defendant who at the date of sentence is 72 years of age committed the offence some five years ago, at the age of 67. He was the product of the common law relationship between Daniel Green of Morne Daniel and Agnita Jno Baptiste of Newtown. They are now both of blessed memory.

[20]The Defendant prior to his incarceration lived in his own home at Morne Daniel where he lived with his two sons on one floor and rented out the other apartments in the building to various tenants including the Deceased.

[21]The Defendant was self-employed; he owned and operated heavy duty equipment. He was involved in several road projects in Dominica and in his younger days he also performed the duties of a Special Constable with the Commonwealth of Dominica Police Force. It is noted that the Defendant was in the past a productive citizen who as he has said to the Court has himself assisted in the maintenance of Law and Order in Dominica.

[22]The Defendant who is a divorcee informed this Court that he was the father of some twenty six children from various relationships.

[23] It was noted in the Pre-sentence Report that at the time of the offence Mr. Green was known to consume a lot of alcohol and had at times to be assisted to his home and when he was inebriated he was known to display abusive mannerisms and lack of respect for himself and others.

[24] Members of the community with whom Mr. Green interacted and who were described as his acquaintances according to the Probation Officer preparing the Pre-Sentence report gave two distinct descriptions of the Defendant. He was referred to as someone who had a big heart and who would literally give the shirt off of his back to help someone in need. On the other hand he was also described as a person who was a ruthless individual with the ability to be cruel and to use violence against other persons.

[25] In her assessment the Probation Officer reported that the Defendant in the case at bar maintains his innocence and expressed no remorse and that the Defendant expressed anger at being incarcerated for a crime that he has not committed.

[26] The Probation Officer also stated that in her overall assessment she was unable to pinpoint major indicators that could predict a life of criminal activity of the defendant and noted that the fact that at the death of his mother when he was 16 years old forced him into an independent life and it is unknown the impact of this traumatic experience may have had on him.⁷

[27] The family of the Deceased Damien Dorival was reported to be still traumatised by his sudden death and the bizarre manner of his death. The brother of the Deceased has described the situation as an emotionally trying situation for the family and the fact that the mother of the deceased was seriously affected by the act of violence perpetrated against her son and understandably so.

[28] The Deceased died leaving two children who are 7 and 9 years old and who have been robbed of their father and of an upbringing that would have included paternal involvement.

⁷ Pre-Sentence for Edward Green prepared by Probation officer Delia Giddings-Steadman dated 19th August 2013.

[29] Dr Lynora Fervrier Drigo a duly registered and licensed Medical Practitioner who is assigned to the Dominica State Prison provided a report on the medical health of the Defendant as ordered⁸. The Doctor reported that having examined the Defendant she confirmed that his general state of health is fair when she last visited him on the 29th July 2013 and that he suffers from Diabetes Mellitus Type 2 and Osteoarthritis of the knees. That the Defendant has been prescribed medication for these illnesses, however that his blood sugar levels have been uncontrolled in recent times due to the Defendant refusing to ingest the medication when he is given his daily doses. The Doctor also confirmed in her report that medical services are available to inmates 24-7 and Doctors clinics are held every other Monday.

[30] Consultant Psychiatrist Mr. Griffin Benjamin presented a report on the Defendant and said he was not diagnosed as suffering from any significant mental health problem, with no medical history of psychiatric illness. It is to be noted, that Mr. Benjamin stated that the Defendant "has not accepted responsibility for the murder incident and showed very little remorse for the death."⁹

The Principles of Sentencing

[31] From the Social Inquiry Report and the Psychiatric Report it is clear that the sentencing Court must consider a sentence that would operate to specifically deter the Defendant and generally to deter others in the Community from offending in a like manner.

[32] Learned Counsel, Mr. Keith Scotland with his prosecution team pressed the Court to consider the relevant factors in the exercise of the discretion vested herein.

⁸ Medical Report on Edward Green under cover note from the Superintendent of Prisons dated 21 August 2013

⁹ Psychiatric Report on Edward Green dated August 15 2013

[33]The Prosecution urged the Court to consider the following mitigating factors:

- (a) The age of the defendant that is he is now 72 years old
- (b) The health of the Defendant as he suffers from Diabetes and Arthritis;
- (c) Has not been convicted of any serious violent crimes.

The aggravating factors as submitted by the Prosecution are as follows:

- (i) That it was a planned attack;
- (ii) That the Defendant was the sole aggressor
- (iii) That the Defendant caught the deceased by surprise (and planned it so) therefore the deceased was helpless;
- (iv) That the Defendant knowingly involved others who he ought to have protected;
- (v) That the Defendant made his intentions clear to everybody and executed his intentions;
- (vi) That this was a brazen act;
- (vii) That the severing of the head from the body puts this offense into the gruesome category ;
- (viii) That the Defendant has shown no remorse;
- (ix) That based on the post-conviction reports and posturing of the Defendant the possibility of reform and social re-adaptation is remote.

Conclusion

[34]The incident leading to the offence in the case at bar was an extremely violent one resulting in the death of Damien Dorival as he left his home on the night of the 11th June 2008. There is no doubt that murder was premeditated and planned by the Defendant. The actions of the Defendant were horrendous, calculated, cold blooded brutal and warrants severe punishment.

[35] As the sentencing judge I have to compare the case at bar with other cases of murder in the jurisdiction and this I have done. It is also to be noted that upon

examination of the facts in this case as established by the Prosecution and accepted by the Jury the aggravating factors outweigh the mitigating factors.

[36] In a number of decisions across the region the sentences for murder have ranged from 7 years to life in prison.

[37] In sentencing the Defendant, I am conscious of the fact that there is a need to send the message out to all and sundry in the Commonwealth of Dominica that crime will not be tolerated. I will impose a sentence that indicates that the Court is prepared to deal very seriously with offences of this nature; with offenders who take the lives of others and show no remorse and in doing so. I am also prepared to temper justice with mercy.

[38] I have taken into consideration the principles of sentencing as cited herein, the mitigating and aggravating factors and the gravity of the offence. I have also taken into account the relevant legal principles in determining the penalty to impose on the Defendant having paid particular regard to the circumstances in which the defendant committed the offence.

[39] I have taken into careful consideration the following cases cited by Counsel on both sides in the course of their written submissions:

- (i) **Nardis Maynard –v- The Queen**¹⁰ - The Appellant was convicted of murder and sentenced to imprisonment for life. He was at the time of sentencing of good character. On appeal the conviction and sentence were upheld.
- (ii) **Kamal Liburd & Jamal Liburd-v- The Queen**¹¹- two brothers aged 24 and 20 years old were convicted of murder and manslaughter respectively. Kamal was convicted for the offence of murder and was sentenced for life and Jamal was sentenced to

¹⁰ No 12 of 2004 St Christopher & Nevis (Unreported)

¹¹ Criminal Appeal No. 9 & 10 of 2003 (St Christopher & Nevis) (Unreported)

thirty years for the offence of manslaughter. On appeal, their sentences and convictions were upheld.

- (iii) **The Queen –v- Lyndon Lambert**¹² the Defendant who was 20 years old at the time of the offence was convicted of the murder and the Court sentenced him to Life in prison.
- (iv) **The State –v- Shane Degallerie**¹³ the Defendant who perpetrated an unprovoked attack on his friend was sentenced to 18 years.
- (v) **DPP –v- Romeo Cannonier**¹⁴ -The Defendant was sentenced to death upon conviction of murder. The trial judge described the murder as “not just a brutal killing but also because the deceased was a police officer who on some previous occasion had allegedly beaten the Defendant. That the murder was a premeditated revenge killing.
- (vi) **David Roberts –v- The Queen**¹⁵ - The Court of Appeal affirmed the sentence of life imprisonment upon conviction of murder
- (vii) **Jerry Martin –v- The Queen**¹⁶ - The Court of Appeal upheld a sentence of life imprisonment upon conviction of murder but remitted the sentence to the High Court for a review of the sentence imposed.
- (viii) **Andrew Milton –v- The Queen**¹⁷ - The Court of Appeal confirmed the sentence in this matter of life imprisonment with Parole after 35 years, upon conviction of murder.
- (ix) **Gurmail Singh Basra**¹⁸ - The Appellant was convicted of conspiracy to murder and aiding and abetting murder of two

¹² Criminal Case number 0057 of 2003 (Grenada) (unreported)

¹³ DOMHCR2011/0013 (Dominica) (Unreported)

¹⁴ SKBHCR 2005/0016 (St Christopher & Nevis) (Unreported)

¹⁵ HCRAP2008/008 (St Vincent & The Grenadines)

¹⁶ C.A. HCRAP 2007/006 (Court of Appeal Virgin Islands)

¹⁷ C.A. HCRAP 2009/006 (Court of Appeal Virgin Islands)

¹⁸ (1989) 11 Cr. App. R. 527

political opponents. His life sentence was varied to 35 years. Lord Chief Justice Lane said in his judgment

“In general it should be said that a life sentence, where it is other than mandatory, as was the case here, is to be reserved for cases where the defendant is someone in respect of whom there is some relevant feature which cannot be determined at the time when the judge is passing the sentence. The usual example of that will be some mental condition which affects the degree of risk which the release of the defendant into the community will present. Where there is no such imponderable feature, and where the question is simply that of punishment and the necessity to deter others, those matters can be gauged at the time of sentence, and so as a rule an indeterminate sentence will be in appropriate.”

- (x) **Walter Borneo –v- The State**¹⁹ it was held inter alia that the entire time spent pre-sentence custody ought to be discounted from the sentence that the trial judge arrives at having taken into account the gravity of the offence, and mitigating and aggravating factors. That the Judge should state the appropriate sentence so arrived then deduct the time spent on remand awaiting trial for the offence, showing in a transparent fashion how the sentence to be served is arrived at.

¹⁹ Cr. App. 7 of 2011 Court of Appeal of Trinidad & Tobago (Unreported)

[40]I have also taken into careful consideration Learned Counsel's for the Defence Mr. Peter Alleyne's plea in mitigation. Mr. Alleyne urged the Court to take into consideration the age of the Defendant and his health considerations and to impose a sentence of a fixed number of years which will protect the society from further harm and that would be sufficient to satisfy the punitive aspect of the sentence.

[41]Learned Counsel Mr. Alleyne urged the court to consider that whilst the aggravating aspect of the case regarding the decapitation of the Deceased's body and its disposal cannot be overlooked that the said actions by the Defendant was not with the intention of hiding the crime as the body was deposited close to a main road and could be identified by other means. I am unable to agree with Counsel cause for as much as the body was deposited where it could have been seen from the road it was also deposited in an area where garbage and debris was being dumped and it could have just as well have been covered by garbage and the smell of its subsequent decomposition would have been masked by the smell of the dump. It is by pure happenstance that a couple of school boys were walking along that way and that the presence of a blood trail drew their curiosity which led them to the gruesome find.

[42]Mr. Alleyne also invited the Court to consider that the Defendant was provoked by the circumstances where he was without electricity and gas and the Deceased who was his tenant failed to pay his rent was constantly in arrears and was seemly constantly spending money entertaining guests in his apartment and had the use of rentals which would have required the use of cash to deposit. That these circumstances would have served as a source of provocation to the defendant. Again, I am unable to agree with Mr. Alleyne here as whilst those circumstances could be considered aggravating certainly they do not amount to provocation that would excuse murder.

[43]I am of the view that based on the evidence led in this case and accepted by the Jury that the Defendant Edward Green is responsible for the death of Damien Dorival. Further, that the murder in the case at bar was senseless, cold blooded and brutal. I accept the aggravating and mitigating factors as submitted by the Prosecution and note that the aggravating factors far outweigh the mitigating factors.

[44] In view of the totality of the circumstances connected upon this case, I am of the considered view that the Defendant because of his age, the state of his health and the length of time that he has been on remand,²⁰ the fitting sentence to impose on the Defendant in this case would be a specific term of years which term should reflect the serious nature of the crime and accordingly the Defendant is hereby sentenced to 25 years in prison including the time served on remand.

[45] I acknowledge the submissions made by both Counsel in this the sentencing phase and I also commend both teams of Counsel for the manner in which they have conducted this case.

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M E Birnie Stephenson
High Court Judge

²⁰ The defendant has been on remand since his arrest on the 12th June 2008