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

SAINT LUCIA
CASE NO. SLUCHRD2009/1105

BETWEEN

THE QUEEN

vs.

KAZIA CHANDLER

Appearances:
Mr. Horace Fraser for the Defendant
Ms. Jenin Samuel-Kisna Crown Counsel for the Crown

2015: March 9, May 4, 15, June 12

Criminal Law - Sentencing – Manslaughter –Guilty Plea - Aggravating Factors – Violent Attack in Public Place – Use of Weapon – Excessive Force – Attack on Defenceless Victim – Death not an Aggravating Feature of this Offence - Mitigating Factors – Low Degree of Provocation – 13 Year-Old Defendant – Remorse - Range of Sentence – Starting Point Influenced by Age of Offender – Benchmark Sentence for Manslaughter Case 15 years – Appropriate Case for a varied starting point of 12 years for Adult Offender having regard to Low Degree of Provocation – Reduced by One Year for Every Year Offender Below age of 18 years – Starting Point for Minor Offender 7 Years – Evaluation of Aggravating and Mitigating Factors Results scaling upwards to 12 Years – Remorse Mitigates the Sentence - Reduction for Guilty Plea – Further Reduction for Delay.

Dangerousness – Section 1097(2)(b) of the Criminal Code – Oblique Suggestion in Guidelines for Extended Sentence to Protect the Public From Serious Harm from Defendant – Test of Dangerousness – Matters for the Court's Consideration – Uncontested Factual Basis of Guilty Plea – Unchallenged Pre Sentence Report – Defendant 13 Years Old at Date of Offence – One Other Offence Committed Subsequently – Pre Sentence Report Identifying Risk Factors & Positive Character Traits – Court Unable to Make Finding of Dangerousness.

A charge of murder was laid against a 13 year-old schoolgirl in 2009 for stabbing a 19 year-old female at a dance hall in Ciceron in 2009. The prosecution case was that on the early morning hours of the 13th June 2009, the defendant who, according to the pre sentence report was a very troubled young girl at the time, was at this dance hall and witnessed one of her friends being attacked by the deceased. The defendant and the deceased knew each other prior to this incident having been once friends themselves. The friendship had ended and the deceased had taken to assaulting and threatening the defendant on occasions. As a result of these threats the defendant

had armed herself with a knife that she carried on her person. On the night at the dance hall when the deceased was on the ground during the fight, the defendant took out her knife from her waist and stabbed the deceased five times on her back and neck; the fatal injury to her neck.

The defendant was arrested and charged and shortly thereafter was released on bail. It was undisputed that she was refused permission by the authorities, to continue to attend her school as a direct result of the charge. In 2012, she committed the offence of wounding another person, again with the use of a knife. She was sentence to eleven months on that offence. This matter was listed for trial on a number of occasions, but largely owing to the lack of resources, it could not be tried. Finally in March 2012, the prosecution gave an indication that it would accept a plea of manslaughter on the basis that the defendant had been provoked on the night having regard to the previous assaults and threats and the fact that her friend was being attacked that night. The defendant was re-arraigned and pleaded not guilty to murder but guilty to the lesser-included count of manslaughter. Having regard to the circumstances of this case, the court considered that this was a proper plea. In their guidelines, the Crown asked the court to consider the subsequent wounding conviction in finding the appropriate sentence in this case. The Guidelines also suggested that the court should consider that this was not a plea made at the first reasonable opportunity.

On behalf of the defendant, the court was urged that the defendant should not be treated as though she had committed the offence when she was 19 years old, this being her present age, but that she should be sentenced as though she had pled guilty shortly after the commission of the offence when she was in fact only 13 years old. Following on from this, counsel also contended that the subsequent offence could not be given any consideration and that the defendant for all intents and purposes should be treated as a first offender. It was further contended on her behalf that she had pleaded at the first opportunity given to her and that she should be given the full discount. Counsel finally asked that having regard to all of the circumstances the considerable delay in the case she should be given a suspended sentence.

Held:

1. As a general rule a sentencing court should approach the imposition of a sentence on an offender as though the offender was being sentenced within a reasonable period after the commission of the offence. Notwithstanding, the sentencing court is entitled to have regard to the personal characteristics of the particular offender at the date of sentencing to determine whether he or she has been of positive good behaviour since the date of the offence, or whether he or she is presently at risk of re-offending. The court is also therefore entitled to consider both past and present circumstances of the defendant to make an assessment of dangerousness under section 1097(2)(b) of the Criminal Code, Cap 3.01. In this regard, the court is entitled to consider subsequent offences committed by the offender.

   Considered: **Cullen v the Director of Public Prosecutions** [2013] 6 JIC 1701

2. Before considering questions of reduction for a guilty plea or the effect that any delay in the proceedings may have on the sentence, the court must first fashion the appropriate sentence having regard to all the principles of sentencing, the general and personal

mitigating factors of both the offence and the offender. In this process, the court must have regard to the statutory maximum together with the seriousness and prevalence of the offence. The offence of manslaughter is a serious offence, carries a discretionary life imprisonment as the maximum, and is among those violent crimes that are prevalent in St. Lucia and so will presumptively attract a significant custodial sentence.

3. In sentencing a young offender below 18 years of age, a court '*should be mindful of the general undesirability of imprisoning young first offenders. For such offenders the Court should take care to consider the prospects of rehabilitation and accordingly give increased weight to such prospects. Where imprisonment is required, the duration of incarceration should take such factors into account.'* A balance must be struck in seeking to avoid the criminalization of young offenders and in ensuring that they are 'held accountable for their actions and where possible take part in repairing the damage they have caused. This includes recognition of the damage caused to the victims and understanding by the young person that the deed was not acceptable. Where the offence is as serious as this one even the young offender will presumptively face a serious custodial sentence. Punishing any offender involves *inter alia* a qualitative assessment of his or her culpability. When it comes to a young offender it is therefore even more important to have regard to his or her maturity at the date of the offence and his or her level of culpability. It is for these reasons that even in these serious offences, it may be appropriate to reduce the starting point for young offenders. In these types of cases where the person's development and maturity is within the normal range for the young person's age, for the purposes of this court, a rough approach would be to lower the adult offender's starting point sentence by one year for every year the young offender is below 18 years.

   Approved: Dicta of Byron CJ in **Desmond Baptiste and Others** OECS Criminal Appeal No. 8 of 2003 at para 30.

   Considered: **R v CK** [2009] NICA 17; United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules); United Nations Convention on the Rights of the Child (UNCRC); Overarching Principles – Sentencing Youth" UK Sentencing Guidelines Council; The **Practice Statement (crime: life sentences) [2002] 3 All ER 412; R v Wooton and Another** [2012] NICC 10

4. In accepting a guilty plea for manslaughter on the basis of provocation a number of assumptions must be made. First, it must be assumed that the factual basis of the provocation is true. Second, it must be assumed that the defendant did not simply get angry and retaliate, but that there was sufficient provocation in law to have made her in fact lost her self-control as a result of things said and or done to her by the deceased. Where such provocation is deemed to have existed the court must assess it to decide what impact it should have on the starting sentence. In this case the provocation was a low degree of provocation and so in accepting the guidelines, the starting sentence for an adult offender in the circumstances of this case would be a sentence of 12 years imprisonment. This starting point would then have to be lowered in consideration of the age of this defendant. In this regard, having regard to the circumstances of this case including the clear signs of the defendant's immaturity reflected in her behaviour at the relevant time it is

appropriate to take off one year for each year she is below 18 years. The starting sentence in this case is a sentence of 7 years imprisonment.

5. There were serious matters of aggravation in this case, the provocation barely passing the pale and justifying the plea of manslaughter. The fatal stabbing took place in a public place, no less a place of public entertainment, where other members of the public were present. The defendant had armed herself with this knife that she brought to the dance with her. Whilst the death is no aggravating factor of this offence (death being the very basis of the offence of manslaughter) there was clear aggravation in the excessive force used by the defendant in stabbing the deceased five times. It was also aggravating factor that she stabbed the deceased when she was defenseless on the ground involved in a fight with another person. The mitigating matters were simply the facts that she was very young and troubled at the time and that this was her first offence. In all of the circumstances, using the starting point of 7 years, the sentence would be scaled upwards to a sentence of 12 years imprisonment mitigated downwards to 10 for her expression of remorse

6. It was not until nearly six years after she had been charged that the prosecution gave any indication that they were prepared to accept a plea to manslaughter on the basis of provocation. It must therefore be taken that this was the first reasonable opportunity given to this defendant to plea to this offence for which she has been convicted. In all the circumstances of this case, she will be entitled to a full discount of three years off the 10 years mark.

7. Under section 1097(2)(b) of the Criminal Code, a court may give a longer than commensurate sentence or an extended sentence but not greater than the statutory maximum 'as in the opinion of the court is necessary to protect the public from serious harm from the offender.' Such a sentence may well have the effect of reducing the discount on a guilty plea or nullifying its effect altogether. This task for the court is to assess the dangerousness of the defendant. The test is that there must be a real and significant risk that the defendant may cause harm to the public (a single member of the public will suffice) in the future. The question of dangerousness must be assessed on the facts and circumstances of each case. The court is entitled to have regard to all of the personal circumstances of the offender together with her *"history of offending including not just the kind of offence but its circumstances and the sentence passed, whether the offending demonstrated any pattern and the offender's thinking and attitude towards offending.*' A first time offender could be properly regarded as dangerous. A court is entitled to have regard to the pre sentence and any psychiatric reports before the court. Where the latter report has been requested, it should provide an assessment on the issue of dangerousness. The defendant should be informed that the court is considering an extended sentence on the basis of dangerousness and given an opportunity to make representations on the issue. This is especially so where the court may be inclined to depart from the risk assessment in the reports.

   Section 1097(b)(2) of the Criminal Code explained.

Considered: **R v Lang and other Appeal** [2006] 2 All ER 410; **R v EB** [2010] NICA 40, **R v Pedley and Others** [2009] 1 WLR 2517, **R v Wong** [2012] NICA 54, **R v Beesley and Others** [2012] 1 Cr App Rep (S) 71 and **R v Cambridge** [2015] NICA 4; **Pluck** [2007] 1 Cr App R (S) 43

8. This can be no finding that this defendant poses a real and significant risk of serious harm to the public. This offence was committed when the defendant was 13 years old. She committed the offence of wounding in 2012 when she would have been 16 years old. She was sentenced to eleven months imprisonment and one-year probation for that offence. she is now 19 years old. Historically, even before she was a teenager, this defendant was a very troubled person. Whilst incarcerated for this offence and the wounding conviction she has been through anger Management Classes, Stress Management and Conflict Resolution. Even though there are risk factors associated with her, the opinion expressed in the pre sentence report that she is now calm, well behaved and helpful, is very instructive. (Having not had the benefit of hearing any evidence, there was no basis for this court to make any contrary finding). There is therefore no finding that she is a dangerous person for the purposes of section 1097(2)(b).

9. A court is entitled to consider whether delay in criminal proceedings should have any effect on that sentence which is to be imposed by the court. It is accepted that where the delay amounts to a breach of the defendant's right to a fair trial within a reasonable time, a court may well be entitled to reduce the sentence to mark this Constitutional breach. Even where there is no breach of the 'reasonable time' guarantee of the fair trial provision, delay may still have the effect of affecting the sentence. Any prolonged delay may have the effect of mitigating and reducing the ultimate sentence, as it might really not be an appropriate sentence having regard to this delay. In this case, the delay was a delay of nearly six years, the substantial cause of which is to be laid squarely at the administrative arm of the State. This is a borderline constitutional breach. Therefore as a matter of discretion, having regard also to the fact that the young defendant was for a completely separate reason effectively derailed by being put out of school which must have been the purpose of granting bail to her, the sentence would be further reduced to a sentence of four years imprisonment. This is sentence that cannot be suspended. Even if it were this court would not suspend having regard to the seriousness of this offence and the fact that this defendant is clearly is at risk of re-offending. The time spent on remand for this offence will be taken into consideration. She will continue to benefit from all those programmes including anger management courses to reduce the likelihood of her reoffending on her release.

   Considered: **Prakash Boolell v The State** [2006] UKPC 46; **Winston Joseph v R** Criminal Appeal No. 4 of 2000; **R v Kerrigan (David Joseph)** 2014 WL 5833936; Dicta of Hughes LJ VP at paragraph 19 in **Attorney General's Reference No 79 of 2009** [2010] EWCA Crim 338; **Spiers v Ruddy** [2008] 1 A.C. 873

Per Incuriam:

It is a reasonable and necessary implication contained in section 1097 and in particular subsection 1097(2)(b) of the Criminal Code that if a court were to impose an extended

sentence on the basis of dangerousness, it must identify which aspect of that sentence is commensurate with the instant offence and which part of the sentence is the extended term imposed for protection of the public. This is necessary, as the offender having served the commensurate term, is really only being kept thereafter in custody because he or she was considered dangerous at the date of sentencing. Justice and fairness would require that there must be a suitable scheme that would include programmes to facilitate rehabilitation aimed at treating and possibly removing the risk of dangerousness. He or she should be given a real opportunity of accessing these programmes.[1] Further, Parliament could not have intended to keep persons in prison for the protection of the public if they ceased to be dangerous. Where the extended period is for a short period and the court has determined that he or she is to be considered dangerous for that period there could be no issue as any scheme to review the question of his or her dangerousness. Where a court makes a determination that an offender is to be considered statutorily dangerous and imposes a discretionary life sentence, the court must duly consider whether a minimum within the extended term is to be also fixed before any review of dangerousness is to take place. There must be therefore be a suitable timely and periodic review process in place that is to be triggered after the commensurate term and after any fixed minimum term within the extended period to give the offender a reasonable opportunity to demonstrate that he or she is no longer dangerous, proof of which entitling him or her to be released.[2] A failure to provide for such a scheme which results in a person being detained under section 1097(2)(b) when he or she is no longer dangerous may well amount to arbitrary detention having the effect in breaching his or her constitutional right to liberty.

Considered: Section 1097(b)(2) of the Criminal Code; **James and others v United Kingdom** [2012] All ER (D) 109 (Sep); **R v Lang and other appeals** [2006] 2 All ER 410

DECISION ON SENTENCING

[1] **RAMDHANI J. (Ag.)** By an indictment dated the 9th March 2010, the defendant Kazia Chandler was indicted for the offence of non-capital murder. It was alleged by the single count on the indictment that the defendant, at about 2.15 a.m. on Saturday the 13th June 2009, at Ciceron in the Quarter of Castries intending to cause death did cause the death of one Kevana King also of Ciceron. At the time the offence was allegedly committed the defendant was a 13 year-old schoolgirl.

---

[1] See Generally Taylor v United Kingdom [2015] All ER (D) 20 (Mar). Considering also R v Lang and other appeals - [2006] 2 All ER 410

[2] James and others v United Kingdom [2012] All ER (D) 109 (Sep). Where the offender continues to be dangerous but there has been a failure to periodically review and assess his dangerousness, the courts is likely to make declarations and may even award damages against the State. See James and Others v United Kingdom [2012] All ER (D) (Sep).

Basis of the Plea

[2] The incident occurred in the Dance Hall area of the Guinness Bar at Ciceron. It was a Friday night party that began on the 12th June 2009. Among the patrons were Kevana King and her friend Kerline Denis. Minutes after 2.00 a.m. on the Saturday morning, Kevana walked up to a group of girls who were standing at the back of the dance hall. The group included the defendant and one Eva Alexander. Kevana bumped into Eva Alexander, and a fight started between them. Kevana fell to the floor during the fight, and the defendant at that point took a knife from her waist and launched an attack on Kevana while she was on the floor. The defendant stabbed Kevana a total of five times to her back and neck. Shortly after Kevana was seen running outside bleeding from her back, and the defendant was seen standing the doorway holding the knife, her clothes covered in blood.

[3] Kevana was transported to the Victoria Hospital, where she was pronounced dead shortly after arriving. A post mortem was subsequently conducted by Dr. Stephen King which revealed the cause of death to hemorrhagic shock secondary to multiple stab wounds, the main one being to her neck.

The Family Impact Statement

[4] The deceased victim was at the date of the incident, a19-year old mother of two children, a boy and a girl aged four and two years respectively.

[5] This deceased victim who came from a troubled home was also one of these young persons who had many issues in the short years of her life. She has been described as lively, sociable, and strong willed, but yet ironically easily influenced by her peers to frequently attend night parties and other social activities, including the association with community gang members.

[6] Today, her grandmother expresses considerable sadness and pain over this loss. She mourns the fact also that her granddaughter died so young and so tragically, and laments that even though she had her issues, her granddaughter did provide support and assistance to her.

[7] The grandmother had assumed to care for the two children who are now 9 and 7 years old. Family members are assisting, as the grandmother is 79 years old and bedridden. The children are neglected by their father and they physically live with an aunt, who herself is currently a student. The family states that the deceased's death has left a void in the children's life.

The Pre-Sentence Report

[8] The pre sentence report paints a sad and miserable story of this defendant's life so far. The defendant is presented to the court now as a 19 years old female who has had a troubled upbringing. Whilst she largely grew up in a home with both her parents, she was a wayward young person and even before she was a teenager she began running away from home and began associating with gang members in the community.

[9] By the time she was 12 years old she had already begun engaging in sex, smoking marijuana and drinking alcohol. Even at this age her family had called in the various support agencies to assist in correcting her behaviour.

[10] In the months before the incident, she was out of control, pretending to attend school and go off with her friends. Her mother chose to exercise corporal punishment. Nothing worked on her and she even began stealing and contracted a sexually transmitted disease all before her 13th birthday.

[11] She has never been formally been employed in her life and is described as literate today. She has no health or mental issues and she admitted that before she was remanded after

her plea of guilty she consumed marijuana and states that she is unable to stop this on her own.

[12] After she had been arrested for this offence she had been granted bail. In 2012, she committed the offence of wounding another person with a knife. She was sentenced to 11 months imprisonment. She has since served that sentence.

[13] Her risk factors have been identified as a 'history of alcohol, cannabis consumption, unemployment and her lack of conflict management skills.' Some community members have said that she responds violently when provoked. The time period for this assessment was not stated in the pre sentence report.

[14] It is the prison officers who state something positive about her. They say that at present the defendant calm, well behaved and helpful.

The Maximum Sentence and Principle of Sentencing

[15] Pursuant to section 93 of the Criminal Code Cap 3.01, of the Laws of St. Lucia, the maximum penalty for manslaughter is life imprisonment. It has been accepted that this is a whole natural life sentence. The court has a wide discretion to give any less term of imprisonment than the prescribed maximum.[3]

[16] In deciding the appropriate sentence, the court is to have regard to all of the principles of sentencing as well as those guidelines that had fixed by either the legislation or the Court of Appeal. The court is mandated to have regard to considerations that rehabilitation is one of the aims of sentencing.

[17] It hardly needs to be said that the offence of manslaughter is a serious offence. Our courts have clearly approached this offence as one that would presumptively attract a custodial

[3] Section 1123(1) of the Code states: "Subject to the provisions of this Code or of any other enactment relating to any offence, the High Court before which any person is convicted of any offence may, in its discretion, sentence the person to any less term of imprisonment than that prescribed by this Code, or such other enactment, for such offence."

sentence[4] and has accepted that the starting point is not necessarily or usually the maximum penalty. The courts have accepted that the maximum penalty must usually be appropriate only for the worst of cases both from the standpoint of the offence itself and the offender.

[18] Our courts have been generally drawing on the UK guidelines as there have been no specific guidelines relating to the ranges of sentence or starting point for this offence. Yardstick references are to be found in the number of cases where in each a general recurring benchmark (not a starting point) of 15 years was fixed having regard to the individual circumstances of the individual case. The benchmark set in each of these cases have in turn been approved by Eastern Caribbean Court of Appeal. See **Hillary Patrick Stench v R** Criminal Appeal No 1 of 1991 St. Lucia (Unreported); **James Jn Baptiste v R** Criminal Appeal No. 10 of 1994 St. Lucia (Unreported); **Denis Alphonse v R** Criminal Appeal No. 1 of 1995 St. Lucia (Unreported); **Bertrand Abraham v R** Criminal Appeal No. 12 of 1995 St. Vincent and the Grenadines (Unreported); **Sherwin Fahie v R** Criminal Appeal No. 2 of 2002 BVI (Unreported).

[19] This court is well reminded that the guidelines are simply there for guidance and that they should not approached in a mechanistic way as such an approach may well produce an unjust sentence. It has been accepted that the court embarking on a sentencing exercise should take the guidelines into consideration but should then 'stand back and look at all the circumstances as a whole and impose a sentence which appropriate having regard to all the circumstances'[5]. See **Roger Naitram and Others v R** Criminal Appeals Nos. 5, 6 and 8 of 2006 Ant. & Barbuda (Unreported)

[20] In considering the appropriate sentence, the court is to have regard to all the circumstances of the case, particularly the aggravating and mitigating features of the offence as well as the personal features of the offender. It has been accepted that a court can properly depart from the guidelines in certain circumstances. It is said:

---

[4] The UK Sentencing Guidelines states that: "A Sentence for public protection must be considered in all cases of manslaughter."

[5] Lord Chief Justice in Millbery v R [2002] EWCA 2891

> *"The existence of a particularly powerful mitigation or very strong aggravating factors may be a good reason to depart from the guidelines. Clearly the suggested starting points contained in sentencing guidelines are not immutable or rigid. Where the particular circumstances of a case may dictate deviating from the guidelines, it would be instructive or the sentencing judge to furnish reasons for so departing."*[6]

[21] The exercise is really an evaluative one that requires the court to weigh the aggravating features and general and personal mitigating features. With such crimes of violence, it is important to bear in mind not only the seriousness of the offence but also the level of culpability of the offender.[7] The point has been well made that if the aggravating features outweigh the mitigating features, the tendency must be towards to higher sentence. It is equally logical and proper that if the mitigating features outweigh the aggravating features the tendency should be towards a lower sentence. I now turn to consider the aggravating and mitigating features of this case to measure the culpability of this offender.

Aggravating Features

[22] Offences which resulting death is always to be regarded as serious offences. The very nature of this offences means that there is a death involved. So the fact that there has been a death is not to be regarded as an aggravating feature of the offence for the purpose of increasing the sentence.

[23] Equally the fact that the offence is prevalent simply means that it will affect the starting point sentence.

[24] It is an aggravating features in this case that the defendant used a weapon, to wit a knife, to inflict the fatal injuries in this case.

---

[6] Per the Lord Chief Justice in Millbery v R [2002] EWCA Crim. 2891 quoted with approval in Naitram and Others v R Criminal Appeals Nos. 5, 6 and 8 of 2006 Antigua and Barbua (Unreported)

[7] R v Haynes [2015] EWCA Crim 199 – the defendant a 17 year old was pumped and angry and was in a confrontation with someone at a party when the deceased attempted to intervene. The defendant got further angry and struck the deceased tell him to get out of the way. The deceased and struck his head and died as a result. The court had regard to the his youth and his previous exemplary character and sentence him to 45 months custody.

[25] It is an aggravating feature of this offence that the defendant used as much force as she did, stabbing the deceased victim at least five times as she lay on the floor.

[26] It is also an aggravating feature of this case that this offence was committed in a very public place – in a dance hall at night during a party when other members of the public were present.

[27] It is also an aggravating feature of this case that the defendant who was not involved in the fight chose to attack the deceased when she was on the ground involved in the fight with the other person.

Mitigating Features

[28] The Crown has identified a number of factors that it suggests may be regarded as mitigating the offence. The true mitigating factors related to this offence and the offender are the facts that the defendant has expressed remorse in this matter, and that she was extremely young at the time of the offence. Further, there was a degree of provocation in this matter. I propose to treat with this latter point first.

[29] With regard to provocation, the defendant states unchallenged in the pre sentence report, that she was familiar with the deceased who would often push and threaten to beat her. She stated that she had been carrying the knife to protect herself from the deceased, and that on the night of the incident she stabbed the deceased several times because she was angry at her for constantly provoking her and allowing someone to rape her[8].

[30] I have considered the current UK position as being very relevant to this aspect of this sentencing exercise. In **Attorney General's Reference (Nos. 74, 95 and 118 of 2002) (Suratan and Others)** [2003] 2 Cr App R (S) 42, the English Court of Appeal set out a number of assumptions which must be made in a case in which the defendant has been

[8] This latter contention was thrown at the court in the pre sentence report, without any other supporting evidence. The Crown surely did not accept it, and even in mitigation it was not pursued vigourously.

found not guilty of murder but guilty of manslaughter on the basis of provocation. The 'assumptions are required if the court is to be faithful to the verdict' and are equally applicable to cases where there has been no trial and the defendant's plea to manslaughter is accepted by the Crown.

[31] The significant assumption recognized by **Suratan and Others** is that where murder has been reduced to manslaughter on the basis of provocation, it must be such provocation as is capable in law to have that effect. The court stated that it is a necessary assumption that the defendant did not simply lose her temper or had a fit of rage; it must be assumed that she in fact lost her self-control, and by things said or done usually by the deceased. It must also be assumed that the offender's loss of self-control was reasonable in all the circumstances, even bearing in mind that people are expected to exercise reasonable control over their emotions and that as society advances it calls for an even greater level of control. Finally, the court would have to accept that the circumstances were such as to make the loss of self-control sufficiently excusable to reduce the gravity of the offence from murder to manslaughter.

[32] I consider relevant and useful the guidance from the UK Sentencing Council that point to a number of other factors which the court ought to have regard to when provocation is the basis of the plea to manslaughter. It is important to make an 'assessment of the *degree* of the provocation'. Its 'nature and duration is the critical factor in the sentencing decision'. It would also be relevant to consider in this regard:

- *"The intensity, extent and nature of the loss of control should be assessed in the context of the provocation that preceded it.*
- *Although there will usually be less culpability when the retaliation to provocation is sudden, it is not always the case that greater culpability will be found where there has been a significant lapse of time between the provocation and the killing.*
- *It is for the sentencer to consider the impact on an offender of provocative behaviour that has built up over a period of time.*

- *The use of a weapon should not necessarily move a case into another sentencing bracket.*

- *Use of a weapon may reflect the imbalance in strength between the offender and the victim and how that weapon came to hand is likely to be far more important than the use of the weapon itself*

- *It will be an aggravating factor where the weapon is brought to the scene in contemplation of use before the loss of self-control (which may occur some time before the fatal incident)*

- *Post-offence behaviour is relevant to the sentence. It may be an aggravating or mitigating factor. When sentencing, the judge should consider the motivation behind the offender's actions."*

[33] In the UK, three ranges have been suggested by the Sentencing Council Guidelines for manslaughter cases in which the conviction or plea is grounded in provocation.

[34] The first range is founded on a low degree of provocation for which the relevant sentence range should be between 10 years and life. Where this low degree of provocation has occurred over a short period it should carry a starting point of 12 years.

[35] The second range is founded on a substantial degree of provocation for which the suggested range is 4 to 9 years imprisonment. Where there is a substantial degree of provocation occurring over a short period, the starting point should be 8 years in custody.

[36] The third range is founded on a high degree of provocation for which the suggested range where custody is further considered necessary, is up to 4 years imprisonment. Where there is a high degree of provocation occurring over a short period, then the suggested starting point is 3 years.

[37] I now turn to consider the degree of provocation in this case.

[38] A close examination of the facts in this case reveals that the defendant's claim may have ***just*** gotten past the pale of provocation. The evidence, and even the defendant's statements to the probation officer (which are only being referred to as the Crown has not

objected to it being used) could have supported a finding that the defendant did not appear provoked that night out of any event that occurred that night. This is further merited as she herself narrates past incidents (pushing and threats and a claim that the deceased caused her to be raped) that led her to arm herself with a knife to 'protect herself'. There is no evidence that shows the period or duration of this provocation.

[39] One, however, must assess all of this from the most favourable view of the defendant's actions with regard to the assumptions. There is also no doubt that all of this must be assessed from the standpoint of the reasonable 13 year old. It is on this basis, when one factors in her obvious immaturity at that age, that the assumption that there was this provocation gains some validity. To my mind, having regards to how the incident unfolded that night and the defendant's explanation, even though the defendant was 'provoked' it must have been because the person who had assaulted and threatened was involved in a fight with one of her friends and operated as the provocation causing her to lose her self-control. The defendant was not in any perceived danger nor is there any evidence or even suggestion that she was acting in defence of her friend. All of this leads this court to conclude that this is clearly provocation of a low degree.

[40] I would therefore consider that having regard the element of provocation and further that the last act grounding this provocation was operating in the face of the defendant on the very night, the starting point in this matter would be a 12-year sentence for an adult offender.

[41] I now turn to consider the fact that the defendant was only 13 years of age at the time of the offence to determine what effect this would have on starting point of the sentence. The cases have shown that where the offence is sufficiently serious even young offender will likely be given a custodial sentence.

[42] That being so, there is no doubt that the rehabilitation aim of sentencing comes clearly into focus when one is considering what is an appropriate sentence for a young offender. As was expressed by Byron CJ in **Desmond Baptiste and Others** at para 30:

> *"On the issue of age of the offender, a sentencer should be mindful of the general undesirability of imprisoning young first offenders. For such offenders the Court should take care to consider the prospects of rehabilitation and accordingly give increased weight to such prospects. Where imprisonment is required, the duration of incarceration should take such factors into account.*

[43] International conventions and modern day criminal punishment recognize that a balance must be struck in seeking to avoid the criminalization of young offenders and in ensuring that they are 'held accountable for their actions and where possible take part in repairing the damage they have caused.[9] This includes recognition of the damage caused to the victims and understanding by the young person that the deed was not acceptable. Within a system that provides for both the acknowledgement of guilt and sanctions which rehabilitate, the intention is to establish responsibility and, at the same time, to promote re-integration rather than to impose retribution."[10]

[44] Sending young people invariably have serious consequences for them and a sentencing court must give due regard to this in fashioning an appropriate sentence. The age of the child and the level of maturity are important considerations especially where it appears that a custodial sentence is likely to be an appropriate sentence. In terms of the young person's maturity it is important not to lose sight of the real likelihood that he or she was unable to fully appreciate the consequences of his or her actions and would have been more likely than not to have given in to impulses especially when he or she may likely to have been subjected to negative social environment and influences.

[45] Many of the guidelines are focused on ensuring that the young person is not derailed in her future life and that these are fully considered in the determination of an appropriate punishment.

---

[9] 'The European Court of Human Rights has regarded the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules) and the United Nations Convention on the Rights of the Child (UNCRC) as providing guidance on how juvenile offenders should be dealt with. Paragraph 5 of the Beijing Rules states that deprivation of liberty should only be imposed after careful consideration. It should be for a minimum period and should be reserved for serious offences." R v CK [2009] NICA 17

[10]"Overarching Principles – Sentencing Youth" UK Sentencing Guidelines Council

[46] In this case this court is embarking on a sentencing exercise six years from the date of the incident. Authority has shown that the general rule is that the offender must be sentenced as if she is being sentenced just after the offence was committed. (I will return to whether this general rule should be departed from in this case.) If this court takes this approach, having regard to the fact that she is now 19 years old, the sentencing process has been significantly altered.[11] The issue of derailing this young girl has lost some of its weight though consideration must still be given to what impact a custodial sentence will have on her future. What remain fully in focus are her chronological age and her level of maturity at the time of the incident.

[47] It is relevant to note the UK Guidelines which state that an offender aged 14 or less "should be sentenced to long term detention only where that is necessary for the protection of the public either because of the risk of serious harm from future offending or because of the persistence of offending behaviour; exceptionally, **such a sentence may be appropriate where an offender aged 14 years or less has committed a very serious offence but is not a persistent offender and there is no risk of serious harm from future offending**." [emphasis supplied]

[48] In finding a starting point for the young offender, the court should as always avoid a mechanistic approach but should look at all the circumstances. The **Practice Statement (crime: life sentences) [2002] 3 All ER 412 issued by Lord Woolf** show that as a rough general guide in case involving murder, the courts have considered at least one year for each year the offender is below the 18 years mark. [12] Noting that this guidance relates to

---

[11] In Cullen v the Director of Public Prosecutions [2013] 6 JIC 1701) O'Malley J stated: "It seems to me that the overwhelming consideration is that the special duty to deal with young offenders as closely as possible to the time of their offences has been seriously breached to the extent that what is now proposed is to try a 40-year old in relation to the words and intentions (not actions) of a 15-year old in circumstances where she is not to blame for the delay. Such a trial would, as described by the Supreme Court in BF v DPP take on a 'wholly different character' to any trial that would have been embarked upon when she was at or near the age of 15. Were she to be convicted, the purpose of the sentencing process would also be radically altered. Although many of the protections afforded to young offenders under current legislation did not exist at the time there were significant features such as the fact that she could have been imprisoned only in very limited circumstances. Sentencing of a girl of her age would have focussed very largely on the issue of rehabilitation, which is at this stage manifestly irrelevant.

[12] Note Practice Statement (crime: life sentences) [2002] 3 All ER 412, where Lord Woolf stated: "24. In the case of young offenders, the judge should always start from the normal starting point appropriate for an adult (12 years). The judge should then reduce the starting point to take into account the maturity and age of the offender. Some children are

murder, I am nonetheless prepared to adopt this rough guide in this case as it relates to a homicide offence with the maximum penalty being life imprisonment. I also give the full one-year for every year she is below 18 years as there has been little evidence to show the level of maturity of this defendant at the time of this offence. If anything, much of what is before the court now shows that she was a troubled girl most likely with the developmental age and maturity of a 13 year old if not less. Much of this could have been and should have been explored nearer to the date of her arrest. Using this yardstick the appropriate starting point in this case therefore will be 7 years.

[49] I now turn to factor in the aggravating and mitigating factors in the case as the authorities have shown that it is necessary to find the appropriate starting point before moving on the consider the other aggravating and mitigating features in the case. Having regard to the various serious aggravating features identified above I am of the view that there is to be a significant move upwards, and an appropriate point would be a 12 years sentence. I now turn to factor in the mitigating features in the case.

[50] For her expression of remorse and the fact that this was her first offence, the sentence would be scaled downwards by 2 years bringing this sentence down to 10 years imprisonment.

[51] Before I turn to consider her guilty plea and the effect it will have on the sentence, I must now consider an issue raised by the Crown in its guidelines. The Guidelines has pointed me to consider the fact that the defendant has since the date of this offence committed the offence of wounding in which a knife was involved.

---

more, and others less, mature for their age and the reduction that is appropriate in order to achieve the correct starting point will very much depend on the stage of the development of the individual offender. A mechanistic approach is never appropriate. The sort of reduction from the 12-year starting point which can be used as a rough check, is about one year for each year that the offender's age is below 18. So, for a child of ten, the judge should be considering a starting point in the region of five years.

25. Having arrived at the starting point the judge should then take account of the aggravating and mitigating factors in the particular case, which will take the prescribed minimum term above or below the starting point. The sliding scale proposed is intended to recognise the greater degree of understanding and capacity for normal reasoning which develops in adolescents over time as well as the fact that young offenders are likely to have the greatest capacity for change. It cannot take into account the individual offender's responsibility for, and understanding of, the crime. See Also R v Wootton and Another a case dealing with the offence of murder."

[52] It is general rule that an offender should be sentenced by reference to her 'age and maturity at the time of the offence'.[13] I consider some of the cases dealing with the sentencing of offenders in 'historic offences' provide some assistance in this regard. The point has been made in **Patterson** [2006] EWCA Crim. 148, a court is entitled in a suitable case to give a defendant some credit for his good character since the date of the offence. It is equally true that a court is entitled to consider whether the defendant poses a risk to society and in this regard the court is entitled to consider not only what is known of the defendant before and at the time of the offence but also what is known about her subsequent to the offence. If, between the date of the offence and the date of sentencing, the defendant has committed further offences, which, when assessed demonstrates that she poses a danger to the general public and or a risk of re-offending, the court would be duty bound to take this into consideration in considering a suitable sentence.

[53] A risk factor relevant to re-offending, shown by the pre sentence report that has not been challenged by the defendant, may be a reason not to depart from an immediate a custodial sentence. Where that risk factor also shows that the offender is dangerous, it may merit an increase to a greater than commensurate sentence in order to protect the public from the offender.

A Question of Dangerousness?

[54] Ordinarily a convicted person may only be sentenced to such term not exceeding the maximum and one 'which in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and other offences associated with the offence'[14].

[13] R v Dobson (Gary) (Sentencing) [2012] WL14586
[14] Section 1097 (2)(a) of the Code

[55] Section 1097(2)(b) however, provides that a court may give a longer than commensurate sentence or an extended sentence but not greater than the statutory maximum 'as in the opinion of the court is necessary to protect the public from serious harm from the offender.'

[56] The legislation leaves it to the court to decide when a defendant is to be considered as falling within section 1097(2)(b). How should the court approach this task of deciding when it is necessary to protect the public from serious harm from the offender?

[57] I have found useful and instructive guidance in answering this question from the UK statutory and case law dealing with dangerous offenders. The UK Criminal Justice Act 2003 contains a number of provisions dealing with a dangerous offender (See sections 225 to 228). The scheme treats with serious offences and generally provides that where a person over 18 years is convicted of a serious sexual or violent offence and the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences', a longer than commensurate sentence may be imposed. The point has been well made that the scheme is more '[15]concerned with future risk and public protection rather than punishment for past offences.'

[58] In fact the UK provisions are wider than the St. Lucia counterpart. In St. Lucia the extended sentence may not exceed the maximum permissible under law, but in the UK for example where the 'dangerous offender' is convicted of an offence listed under Schedule 15 of the CJA 2003 carrying a maximum term of 10 years, the court if it makes the requisite finding of dangerousness, impose even a discretionary life sentence. It is to be noted that legislation contains an alternative regime for young offenders – inclusive of detaining them in young offenders institution for public protection.

[59] The cases show that[16] it is really a question of assessing the 'dangerousness' of the

[15] See English and Wales Court of Appeal decisions in Lang [2006] 1 WLR 2509 and Johnson [2007] 1 WLR 608 both discussed in Blackstone's Criminal Practice 2012 at paragraph E4.1.
[16] R v Lang [2006] 2 All ER 410, R v EB [2010] NICA 40, R v Pedley and Others [2009] 1 WLR 2517, R v Wong [2012] NICA 54, R v Beesley and Others [2012] 1 Cr App Rep (S) 71 and R v Cambridge [2015] NICA 4

offender. In **Lang** the point was made that the requirement that the risk must be significant means more than a possibility – it must be noteworthy, of considerable amount'. In **R v Kelly**[17], the Northern Ireland Court of Appeal making reference to the leading English and Northern Ireland cases summarized the relevant principles is a useful passage. He stated:

> *(1) The risk identified must be significant. This is a higher threshold than mere possibility of occurrence and can be taken to mean "noteworthy, of considerable amount or importance".*
>
> *(2) Factors to be taken into account in assessing the risk include the nature and circumstances of the current offence, the offender's history of offending including not just the kind of offence but its circumstances and the sentence passed, whether the offending demonstrated any pattern and the offender's thinking and attitude towards offending.*[18]
>
> *(3) Sentencers must guard against assuming there was a significant risk of serious harm merely because the foreseen specified offence was serious. If the foreseen specified offence was not serious, there would be comparatively few cases in which a risk of serious harm would properly be regarded as significant."*

[60] The court must have regard to all of the information before it. Where there has been a trial a court, having heard the evidence of the offence and perhaps the offender, may well be on that road to a finding of dangerousness. A court may require the assistance of the pre sentence report, and in some cases a psychiatric report. Where such a latter report is required, it should clearly be directed to the issue of dangerousness. The authorities show that the reports before the court are not binding on the court but the court should warn counsel in advance if it is minded to depart from any assessment of risk in these reports, and provide an opportunity of addressing the point.[19] The principles in this regard were captured in Blackstone's Criminal Practice at paragraph E4.9 where it is said:

> *"It would only rarely be appropriate for a judge to permit cross examination of the*

---

[17] [2015] NICA 29

[18] In R v Lang Rose LJ stated that, "In assessing the risk of further offences being committed, the sentencer should take into account the nature and circumstances of the current offence; the offender's history of offending including not just the kind offence but its circumstances and the sentence passed, details of which the prosecution must have available, and whether the offending demonstrated any pattern; social and economic factors in relation to the offender including accommodation, employability, education, associates, relationships and drug or alcohol abuse; and the offender's thinking, attitude towards offending and supervision and emotional state. Information in relation to these matters would most readily, though not exclusively, come from antecedents and pre-sentence probation and medical reports …"

[19] Pluck [2007] 1 Cr App R (S) 43

author of a pre-sentence report on the assessment of risk (S [2006] 2 Cr App R (S) 224. Where possible the prosecution should be a position to describe to the court the facts of any previous specified offences on the record. If there is doubt over the accuracy of the facts or circumstances of previous convictions of the offender, it may be necessary, accordingly Samuels (1995) 16 Cr App R (S) 856, to investigate the context of an earlier offence to see if the offender really does constitute a risk, but adjournment in such circumstances was not obligatory. It may be possible to proceed on the basis of the information before the court, and in some cases the court may infer the seriousness of past offences from sentences which had been imposed for them. It is clear that in the assessment of dangerousness it is not just previous specified offences which are relevant. The court may have regard to offences on the record which are not specified offences, especially where they indicate an escalating pattern of seriousness. Indeed, it is not a prerequisite to a finding of dangerousness that the offender has any previous convictions. A first offender might qualify. Nor is it necessary that serious harm (or indeed any harm) has been caused by the offender in the course of past offences, since that might have been simply a matter of good fortune – a public protection sentence may properly be imposed where there is a significant risk of serious harm for such offences in the future."

[61] I consider that the above learning is relevant to a court in this jurisdiction in approach section 1097(2)(b). What the court is being asked to do, as the court in the UK, is to assess the dangerousness of the defendant. There must be a real and significant risk that the defendant may cause harm to the public (a single member of the public will suffice) in the future.

[62] The question of dangerousness must be assessed on the facts and circumstances of each case. Where a court is minded to consider an extensive sentence under this provision, the court must give advance notice to counsel for the defendant. Where the conviction is founded on a plea, a court must be careful that there are no real unresolved issues of facts to be considered. Where these exists and cannot be resolved otherwise, consideration should be given as to whether a ***Newton Hearing*** is necessary. It may that the finding of dangerousness which leads to an extended sentence for the protection of the public may well have the effect of reducing the discount on the guilty plea or nullifying it altogether.

[63] The legislation requires that the court be concerned both with a commensurate sentence for the immediate offence and an appropriate extended sentence on a finding of dangerousness. There are real issues involved in imposing an extended sentence. A court

is being called on to predict future conduct. How long will this offender continue to be a danger to the public? There will be those cases where the defendant is considered to be so dangerous that a discretionary life imprisonment will be appropriate as being also the maximum permissible. A defendant charged with robbery may also be equally considered so dangerous, but the legislation binds the court not to go beyond the statutory maximum. Is this a parliamentary statement that robbers who stabbed a man during the course of the robbery cannot be so dangerous that they may be given a life imprisonment, but someone who stabbed and killed a man may be sentenced to a discretionary life sentence on the basis of dangerousness? It might have simply been the good fortune of the robbers that their victim did not succumb to the injuries and so the court in St. Lucia is bound by the statutory maximum for robbery even on a finding of dangerousness. Where is the logic in that? As I noted earlier, in the UK, a court may impose a discretionary life imprisonment even where the statutory maximum was a lesser sentence.

[64] There is also a countervailing issue. Since a court is only able to assess dangerousness with all the information available at the date of sentencing, the court at the date of the sentencing is involved in making an assessment of future risk[20]. It entirely possible that at some time in the future the offender may be rehabilitated and so cannot be regarded as statutorily dangerous. In the UK, express provisions are made for timely and periodic reviews so that if dangerousness ceases the offender, who is usually given a tariff sentence, is to be released on licence. There are no specific expressed provisions in the St. Lucia legislation that expressly provides for such scheme.

[65] The St. Lucia provisions on its face simply allow the court to sentence the offender to such an extended as is necessary to protect the public from serious harm from him or her. Without doubt, the basis of the extended custodial period is only reasonably justifiable on the basis that the offender is considered dangerous. If he ceased to be dangerous and he is kept under section 1097(2)(b), it would clearly be an interference with his fundamental right to liberty.

[20] R v MJ [2012] 2 Cr App Rep (S) 416

[66] This analysis leads me to the inescapable view therefore, that it is a reasonable and necessary implication in section 1097(2)(b) that if a court were to impose an extended sentence on the basis of dangerousness, it must identify which aspect of that sentence is commensurate with the instant offence and which part of the sentence is the extended term imposed for protection of the public. This is necessary, as the offender having served the commensurate term, is really only being kept thereafter in custody because he or she was considered dangerous at the date of sentencing. Justice and fairness would require that there must be a suitable scheme that would include programmes to facilitate rehabilitation aimed at treating and possibly removing the risk of dangerousness. He or she should be given a real opportunity of accessing these programmes.[21] Further, Parliament could not have intended to keep persons in prison for the protection of the public if they ceased to be dangerous. Where the extended period is for a short period and the court has determined that he or she is to be considered dangerous for that period there could be no issue as any scheme to review the question of his or her dangerousness. Where a court makes a determination that an offender is to be considered statutorily dangerous and imposes a discretionary life sentence, the court must duly consider whether a minimum within the extended term is to be also fixed before any review of dangerousness is to take place. There must be therefore be a suitable timely and periodic review process in place that is to be triggered after the commensurate term and after any fixed minimum term within the extended period to give the offender a reasonable opportunity to demonstrate that he or she is no longer dangerous, proof of which entitling him or her to be released.[22] A failure to provide for such a scheme which results in a person being detained under section 1097(2)(b) when he or she is no longer dangerous may well amount to arbitrary detention having the effect in breaching his or her constitutional right to liberty.

[67] I now turn to this case and this defendant and ask: "Do I consider her to be a dangerous offender within the meaning of section 1097(2)(b)?"

---

[21] See Generally Taylor v United Kingdom [2015] All ER (D) 20 (Mar). Considering also R v Lang and other appeals - [2006] 2 All ER 410

[22] James and others v United Kingdom [2012] All ER (D) 109 (Sep). Where the offender continues to be dangerous but there has been a failure to periodically review and assess his dangerousness, the courts is likely to make declarations and may even award damages against the State. See James and Others v United Kingdom [2012] All ER (D) (Sep).

[68] This offence was committed when the defendant was 13 years old. She committed the offence of wounding in 2012 when she would have been 16 years old. She was sentenced to eleven months imprisonment and one-year probation for that offence.

[69] I have considered the basis of the plea. I have also considered the pre sentence report which states that historically, even before she was a teenager, this defendant was a very troubled person. Information shows her running away from home and spending time with known gang members in her community. From the age of 12 she began engaging in sex, using alcohol and marijuana would constantly not attend school, run away from home and attend night parties. Whilst incarcerated for this offence and the wounding conviction she has been through anger Management Classes, Stress Management and Conflict Resolution.

[70] The authorities at Bordelais states that they have no issues with her and that she is now calm, well behaved and helpful.

[71] In all of the circumstances even if she does indeed have a number of risk factors to the possibility of reoffending, I cannot make any finding at this stage that she is a dangerous person for the purposes of section 1097(2)(b). For this reason, in this case, I will decline to use the pre sentence alone or together with the basis of the plea in the case as reason to increase her sentence for the public's protection.

The Guilty Plea

[72] The defendant has pleaded guilty to this offence. The Crown guidelines state that this has not been at the first available opportunity. I disagree. This has been the first time that the Crown has given a real indication that they would be prepared to accept a plea to the lesser count of manslaughter. It has never been available before. Therefore the defendant is to be entitled to the full discount having regard to the circumstances of this case. I have considered that three years will be taken off the sentence for her plea of guilty.

The Issue of Delay

[73] This matter has taken nearly six years to come to trial. Any person charged with a crime is to be tried within a reasonable time. This is a constitutional guarantee contained in the fair trial provision of the St. Lucia's Constitution. A sentencing court is entitled to consider whether this should have any effect on the sentence.[23] The authorities show that even where there is no issue of any breach of the right to a fair trial with a reasonable time it has been held that delay:

> *"… is of relevance if not to a formal assessment of Article 6 then undoubtedly to the broader question of what a just sentence is when eventually and belatedly conviction occurs."*[24]

[74] Our court of Appeal has also accepted that delay may have an impact on what would be the appropriate sentence in any given case. The cases show that prolonged delay may have the effect of mitigating and reducing the ultimate sentence, as it might really not be an appropriate sentence having regard to this delay.[25]

[75] An examination of this matter shows that the preliminary inquiry only took four months to be completed in October 2009. It was not until March 2010, however, that the matter came on for arraignment. There were several adjournments until December 2010 when a trial date was vacated and the matter was then adjourned to September 2011. It was again set for trial in February 2012 when some points were raised. After a number of adjournments, the reasons for some being at the feet of the defence, the matter was in December 2012, fixed for trial on 28th October 2013. On that day, this defendant was not brought from Bordelia and the matter was again adjourned to the following month. Adjournments

---

[23] In Rummun v State of Mauritius [2013] 1 WLR 598, Lord Kerr of Tonaghmore JSC on behalf of the Board stated:"…it is the duty of the sentencing court, whether or not the matter has been raised on behalf of a defendant or appellant, to examine the possibility of a breach of that person's constitutional rights in order to decide whether any such breach should have an effect on the disposal of the case."

[24] Per Hughes LJ VP at paragraph 19 in Attorney General's Reference No 79 of 2009 [2010] EWCA Crim 338 See also Spiers v Ruddy [2008] 1 A.C. 873

[25] Prakash Boolell v The State [2006] UKPC 46; Winston Joseph v R Criminal Appeal No. 4 of 2000; R. v Kerrigan (David Joseph) 2014 WL 5833936

continued usually because other matters were being tried by the court and it simply could not be tried.

[76] All things considered much of this substantial delay could be laid at the feet of the administrative arm of the State. This is a therefore a borderline constitutional breach of her right to be tried within a reasonable time.

[77] This delay is regrettable and really unfortunate. It was accepted that the defendant was put out of school after she was release on bail for this offence. This offending was directly responsible for her effective derailment; it was made worse by her expulsion from school.

[78] For all these reasons, I consider that the justice in this case requires that a substantial discount should be given to the final sentence. I do note that the defendant has not used this time to stay away from the wrong side of the law. All things considered this sentence will be reduced by three years.

The Sentence of the Court

[79] The defendant Kazia Chandler is sentenced to four years imprisonment. I am unable to suspend this sentence, but even if this court were able to suspend this sentence, this court would not have done so. There is no doubt this offence should carry a custodial sentence. This is a particularly serious offence. Significantly on this point, as this defendant faces me, she is effectively no longer a really a first time offender. This court cannot turn a blind eye that she had now committed another offence of violence. It would appear that knowing what she did and what she faced with regards this offence did not prevent her from reoffending. There is still a real risk of her re-offending. She needs to be taught this lesson again. If one commits a serious crime one must expect to be sent to prison. Youth and other mitigation can only go so far. This was an exceptionally violent crime from such a young person at the time. It is clear to me that in addition to being a troubled young girl she was also somewhat hardened at the date of this offence. We have too many offences in this society involving violence, involving young people, involving violence and young

people in public places, and especially in places of entertainment. Had it not been for her guilty plea and the delay in this case she would have had to serve a sentence of 10 years imprisonment for this offence.

[80] She shall be given credit for the time spent on remand. She will continue to receive the benefit of all rehabilitative programmes that are available and which may reduce the risk of her re-offending when she is released back into society.

.....
Darshan Ramdhani
High Court Judge (Ag.)