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

SAINT LUCIA
CASE NO. SLUCHRD2011/1679

BETWEEN

THE QUEEN

vs.

JEAN FONTINELLE aka 'ZONG'

Appearances:
Mr. Alberton Richelieu for the Defendant
Mr. Leon France Crown Counsel for the Crown

2015: 22 April, 4 May, 15 July
10 November

Sentencing – Murder – Plea of Guilty – Aggravating Factors – Pre-mediated Killing – Use of Firearm in Public Place – Spontaneous Decision to Change Target – Death of Innocent Bystander – Mitigating Factors – First Time Offender – Remorse of Sorts – Guilty Plea – Starting Point of 30 Years – Notional Sentence of 38 years – Full Discount for Guilty Plea – Final Sentence of 25 Years.

DECISION

[1] **RAMDHANI J. (Ag.)** This was a decision delivered orally at the sentencing hearing on the 15th July 2015. I promised to reduce it into writing. This is the written decision.

[2] By an indictment dated the 3rd April 2012, the defendant Jean Fontinelle aka 'Zong' was charged for the offence of non-capital murder. It was alleged by the single count on the indictment that the defendant, at about 7.30 p.m. on the 25th August 2011, at Wilton's Yard in Castries within the first Judicial District of St. Lucia, with the intention to cause death, did cause the death of Lisa Hidra Pelagia Isidore.

[3] The defendant was first arraigned on the 30th April 2012 and he immediately pleaded guilty. Events however, which are not relevant here, led to this plea being vacated.

[4] The matter suffered a number of adjournments, and on the 5th November 2014, the matter was transferred to this court. On the 11th December 2014, through Mr. Richelieu, he requested to be re-arraigned as he wished to take a particular course. The court noted that he had already been assessed by a psychiatrist as being fit to plead, and enquiry led the court to conclude that he was aware of the matters that the court could have regard to during the sentencing stage should he plead guilty. He was also aware of the court's powers of sentence.[1]

[5] He was re-arraigned on his request. On this arraignment he pleaded guilty to the charge of murder.

[6] The court ordered an updated pre-sentencing report and an updated psychiatric report.

The Facts of This Case

[7] The defendant at the time of this shooting was a 20 year old unemployed school dropout living at Leslie Land Castries and who spent most of his time on the 'block' socializing with friends and smoking marijuana.

[8] On the 26th August 2011, he was informed by one of his friends, one Cameron Bilizaire that the latter had been attacked and that persons were planning to kill them. Together, they conspired to avenge the attack and make a pre-emptive strike by shooting the men who were involved in the incident with Belizaire.

[9] The defendant deciding that he would 'dish out vigilante justice' armed himself with a firearm, donned a makeshift mask and on the same day, the 26th August 2011, he planted

[1] See Rudolph Lewis v R Criminal Appeal No. 16 of 2009 which confirms the procedure to be adopted when a defendant wishes to plead guilty to murder

himself behind a vehicle at the side entrance of Wilton's Yard in Castries laying in wait for these men.

[10] At some point in time the co-conspirator told the defendant that none of his attackers were present and that he should not carry out the plan. Notwithstanding, the defendant insisted that he would carry out his intention, and shoot even an associate of those persons, and shot one 'Shady' who was sitting at a nearby shop. The defendant awaited what he thought was a perfect opportunity to shoot 'Shady'. Just as he was about to shoot he was spotted with the gun and a number of persons tried to run away from him. He did shoot at Shady, but he missed and shot and killed one of those persons who were running to get away from him. The victim was 24 year-old Lisa Isidore. She died on the spot.

[11] After he fired the fatal shot the defendant ran off and in doing so he pulled off his mask. It was then that he was recognized by two eyewitnesses who later identified him at an identification parade.

[12] On the 27th August 2011, the defendant accompanied by his lawyer reported to the Criminal Investigations Department at Police Headquarters in Castries. He was detained by the police as part of the investigations during which time he gave two statements under caution to the police. The first was an exculpatory statement in which he set up an alibi for himself on the 26th August 2011. In the second statement he retracted the first statement and confessed to shooting the deceased but claimed at the time that it was inadvertently done as his intention was to shoot one 'Shady' who was seated near Face's shop in Wilton's Yard. However (insert **comma** after however) Shady got up and ran off.

[13] When the charge was preferred against the defendant, he said, 'I never meant to kill the girl'.

[14] The police never recovered the firearm. They did recover a spent shell and a piece of copper suspected to be the warhead near the alley where the incident took place.

The Family Impact Statement

[15] Lisa Isidore, the innocent bystander who was shot and killed in this tragedy was seen by her family members as a very pleasant, obedient, loving and mostly helpful young lady at the time of her death. At the time of her death, she resided at Babbonneau with one of her brothers. Her other two siblings resided in the United States of America. Both her parents died before this tragedy.

[16] Some time ago, the deceased, Ms. Isidore had declined an opportunity to migrate to the USA. Her mother was shortly thereafter diagnosed with breast cancer and the deceased was her primary caregiver until her mother's passing. During that time she also assisted with the care of her elderly paternal grandfather. When her mother died, the deceased took over her stall at the market and as he mother did, sold tee shirts and other like items. After her mother's death, it was her intention to pursue a career in hairdressing and to up the opportunity to migrate to the USA to join her other two siblings. That was extinguished by this murder.

[17] This death has affected close family members and an aunt, Ms. Ucella Nelson who cared for the deceased as her own child continues to grieve her passing and even up to now has many sleepless nights over the loss of her niece, saying that the most painful thing for her to bear is knowing that Lisa was a healthy young girl with her full life ahead of her, which was taken by this crime. She states that not only is deceased robbed of her chance to live a full life and to fulfill her dreams, but she too has been deprived of the help, love, support and care that she once received from her niece.

The Pre-Sentence and the Psychiatric Reports

[18] The defendant is now a 23 year-old man. He was 20 years old and had no lawful job when he committed this offence. At the date of this offence he could be aptly and properly described as a high school dropout, a delinquent and possessing few life skills.

[19] The pre-sentence report discloses that the defendant was raised in a troubled environment witnessing his father physically abuse his mother. When he was eight his father was found dead in his car no doubt a traumatic event for the defendant, and his mother did observe a marked change in his behaviour after he entered St. Mary's College and was in Form 3. He eventually dropped out of school.

[20] From his early days he began as associating with bad company. He became very troublesome at home and at school and was constantly at loggerhead with his mother who had considerable difficulty controlling him. During these mid teenage years he worked for about two years in car repair shop in Gros Islet. Whilst the owner of this business did say that the defendant was well mannered and respectful to him, he recalled cautioning him about his inability to control his anger.

[21] At home, the defendant did not share a good relationship with his mother and moved out when he was 17 years old to live on his own at Leslie Land, Castries. There he lived frugally in a one-bedroom apartment with running water but no electricity, and which he really used only for sleeping as he spent much of his time on the 'block' socializing with friends. He admitted that he was a delinquent who followed bad company and engaged in many negative activities.

[22] Though he was not known as a troublemaker, residents in that neighbourhood describes him as being part of a group of young men who would spend long hours near the roadside smoking cannabis and speaking loudly. He himself actually admitted that his main source of income was from the sale of cannabis.

[23] The defendant has taken up CXC studies in Social Studies and Principles in Business at the Bordelais Correctional Facility and did write CXC examination in the May/June 2015 sittings. He has expressed the hope to become a teacher someday. The officers at Bordelais states that the defendant is 'cool', reserved and generally adheres to the rules and regulations of the facility. There is some evidence that he has continued to find and use marijuana in prison.

[24] At present he suffers from sickle cell anemia for which he uses medication daily. He states that he tires easily and gets excruciating joint pain and this he says affects his ability to play sports. (Strangely he has received a third place medal at Bordelais for playing football).

[25] He is well tattooed. Today, however, he wishes that he had never gotten them as they no longer speak to his personality.

[26] Apart from the sickle cell condition, the defendant does not suffer from any known medical or mental condition.

[27] With regards to the offence, he has expressed remorse of sorts. He said that it was his intention to shoot Shady but that he missed and shot the deceased. He said that he did not know the deceased and that he was very sorry for his actions. He adds that he has taken responsibility for his actions and he knows he has caused tremendous grief to her family. He states that he is willing to do anything to make the situation better for the deceased's family. In pleading for leniency, he states that he has messed up his life and has brought grief to his family. He says that he now knows better and that he hopes to be there for his younger brother who he hopes to guide.

[28] The psychiatric report contains a number of psychiatric assessments of the defendant. It states that he is asymptomatic and is fit for sentence. With regard to his mental status examination, it states that there is a '[f]ailure to conform to social norms by repeatedly engaging in unlawful activities. Reckless disregard for the safety of self and others."

[29] Several recommendations were made. These were (i) that he should discontinue the use of cannabis; (ii) submit to drug rehabilitation; (iii) undergo psychotherapy, and (iv) follow up at the clinic.

The Maximum Sentence and Principle of Sentencing

[30] The prescribed penalty for non-capital murder 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.[2]

[31] In deciding what the appropriate sentence is in any given case, the court is to be guided by the provisions of the Criminal Code as well as those common law principles of sentencing.

[32] There are no statutory benchmarks in place for the offence of murder. The court of course is required to have regard to the aims of any sentence and in particular section 1102(2) of the Criminal Code Cap 3.01 of the Revised Laws of St. Lucia, must have regard to the considerations relating to the rehabilitation of the offender as an aim of sentencing. Section 1102(2)(b) also requires that the court observe as a guideline in any sentence, that 'the gravity of any punishment must be commensurate with the gravity of the offence."[3]

[33] A court in St. Lucia may well be entitled to impose a sentence of life imprisonment even when it is sentence other than a commensurate sentence. This is one of the effects of section 1097(2) (b) which allows a longer than commensurate sentence to be imposed where the 'offence is of a violent or sexual nature' and in the opinion of the court 'such a term is necessary to protect the public from serious harm from the offender.'

[34] The defendant through his attorney has effectively argued that a fixed determinate sentence should be set as a benchmark in this case and that further, this was not an appropriate case for a life imprisonment and that a determinate sentence was the only commensurate sentence.

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[2] 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."*

[3] See also section 1097(2) (a) of the Criminal Code Cap 3.01

[35] No doubt as Parliament has recognized and accepted, a commensurate sentence for the offence of non-capital may well be a sentence of life imprisonment. Our court of appeal in **David Roberts v R** Criminal Appeal No. 8 of 2008 has accepted that:

> *"It may well be that considering the matter in the round, including the individual circumstances of the offender and the offence, punishment and deterrent may well be served by the prisoner remaining in prison for life."*[4]

[36] Our courts have not specified in what individual circumstances of the offender should be considered as informing a sentence of life imprisonment and this is left to the individual court tasked with sentencing.

[37] The current UK statutory position for certain serious offences under the CJA 2003, is that a court should only impose a life imprisonment on an offender in certain circumstances. Whilst such a sentence may often depend on whether the offender is considered dangerous, a sentence of life imprisonment does not always depend on a finding of dangerous and may well be imposed on the basis of the seriousness of the offence. In **Attorney General's Reference (No 27 of 2013); R v Burinskas; R v Phillips and other appeals** [2015] 1 All ER 93, the court held:

> *"If the offender is not dangerous and s 224A of the CJA 2003 does not apply, a determinate sentence should be passed. If the offender is not dangerous and the conditions in s 224A are satisfied then (subject to subsection (2)(a) and (b)), a life sentence must be imposed. If the offender is dangerous, the judge must consider whether the seriousness of the offence and offences associated with it justify a life sentence. Seriousness is to be construed by the consideration of: (i) the seriousness of the offence itself, on its own or with other offences associated with it in accordance with the provisions of s 143(1)[5]; this is always a matter for the judgment of the court; (ii) the offender's previous convictions, in accordance with s 143(2); (iii) the level of danger to the public posed by the offender and whether*

[4] There was a constitutional challenge to a sentence of life imprisonment imposed in St. Vincent and the Grenadines in this case. The Court of Appeal held *inter alia* that: "Under section 65(1) of the Constitution, the Governor General may grant a free or conditional pardon to a person sentenced to life imprisonment, grant a respite of the imprisonment imposed; substitute a lesser punishment or remit the punishment imposed. This indicates that there is a possibility of a future release by executive clemency of a prisoner serving a life sentence. A life sentence therefore would not be incompatible with section 5 of the Constitution."

[5] Section 143, so far as material, provides: '(1) In considering the seriousness of any offence, the court must consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or might forseeably have caused. (2) In considering the seriousness of an offence ("the current offence") committed by an offender who has one or more previous convictions, the court must treat each previous conviction as an aggravating factor if (in the case of that conviction) the court considers that it can reasonably be so treated having regard, in particular, to—(a) the nature of the offence to which the conviction relates and its relevance to the current offence, and (b) the time that has elapsed since the conviction …'

there is a reliable estimate of the length of time he will remain a danger; (iv) the available alternative sentences. If a life sentence is justified then the judge must pass a life sentence in accordance with s 225."

[38] A finding of dangerousness may be made where the court is satisfied that there is a real and significant risk that the offender may commit further offences which involves serious harm to members of the public. It is sufficient to establish that the significant risk exist in relation to a single member of the public or a small group of the public.[6] This finding of dangerousness may be made having regard to past conduct as well as with reference to the facts of the instant offence. The court may take into consideration all that is known to the court deriving from the agreed upon facts, and or the admissible evidence or information which grounds the charge and has been tested by cross examination. Quite part from this the court is also entitled to make such a finding from the various reports before the court including the pre-sentence and the psychiatric reports.[7]

[39] I am of the view that even in the absence of a finding that the offender is dangerous, this court would be entitled to impose as a commensurate sentence, a sentence of life imprisonment for non-capital murder where the aggravating and general mitigating features taken together personal features of the defendant to justify such a sentence. In the absence of a finding that the offender is dangerous, there must **really be serious aggravating features** in a case of this nature to meet this threshold.

[40] Whether it is to be a sentence of life imprisonment or a fixed determinate sentence, the Crown's guidelines has also properly suggested that the court is required to bear in mind the statutory guidelines and the other classic principles of sentencing in arriving at the appropriate sentence. In the context of such an approach, it is useful to draw upon the experience of the courts both in and out of this region in considering whether the seriousness of the offence taken in the round with all the other features of the offence and the offender requires a sentence of life imprisonment or whether a determinate sentence is appropriate and then to set an appropriate benchmark for the offence and ultimately to fix the final sentence.

[6] See R. v Fazli (Hamayoun) [2009] EWCA Crim 939
[7] See R. v Fazli (Hamayoun) [2009] EWCA Crim 939

[41] When these guidelines were filed in 2012, the Crown's guidelines had commended the UK's minimum starting point for this offence that had been adopted by the British Virgin Islands for these types of cases. See **R v Andrew Milton and Others** Criminal Case number 18 of 2007

[42] For the UK, the procedure that should be followed to arrive at a starting point is set out in a 'Practice Direction'. This Practice Direction requires that the court to consider the seriousness of the offence and explain Schedule 21 of the UK Criminal Justice Act 2003. In very serious cases where there are a number of aggravating factors a minimum term of 30 years is appropriate.

[43] This Practice Direction and the CJA 200 engaged the England and Wales Court of Appeal in four conjoined appeals and affirmed that the recommended tariff for very serious murders was a sentence of 30 years imprisonment**. R v Sullivan, R v Gibbs, R v Elener, R v Elene**r [2004] Crim 1762.

[44] The guidelines asked the court to consider **R v Neal Jones and Others** [2006] 2 Cr. App. Rep (s) 19. In that case the English court was tasked with finding a minimum sentence. The court held that where a firearm was carried for the purpose of being used as an offensive weapon, it is hard to envisage a reason for not following the guidance in Sch. 21 of the UK CJA 2003 and adopting 30 years of a starting point.

[45] I should note that recent guidelines submitted to the court in another matter has suggested that this court should employ a '40 years' 'benchmark' and then make the appropriate deductions to find the appropriate sentence in cases of murder. The prosecution when tasked about suggesting different 'benchmarks' explained that it was in reliance on several recent decisions from the other criminal court citing **R v Lance Blades** Criminal Case No. 41 of 2011 SLU.

[46] There have been various uses of the word 'benchmark' in sentencing decisions. Some cases employ the term 'benchmark' to mean that 'starting point sentence' relevant to the offence before the aggravating and mitigating features of both the offence and the offender a considered and factored in as well as any plea or additional mitigating factor such as delay. (This is the meaning the prosecution appears to be ascribing to it now.) Other cases use the term benchmark as that notional sentence which is arrived at after application of principles to the circumstances of the commission of the offence, that is, a sentence arrived at having regard to the serious nature of the offence with regards to the aggravating and mitigating features of the offence and the offender; once this 'benchmark' is arrived at the court then considers what deductions may be made for personal factors and or for pleas and matters such as delay to arrive at the final sentence.

[47] If the term 'benchmark' is to be understood as meaning the 'starting point sentence', then really all the aggravating features in the case would only serve to take such a sentence upwards with the mitigating features taking it downwards.

[48] As I understand it, the UK guidelines are suggesting a 'starting point' sentence of 30 years for cases of murder. When the learned judge in **Blades** set a 'benchmark' of 40 years, he appeared to have already factored in the serious aggravating features of the offence; in other words he had already gone past the starting point and was working his way towards a final sentence. When he arrived at 40 years in that case, it must have been because of the circumstances of those cases. I do not consider that the learned judge was setting a new 'benchmark' as in a new 'starting point sentence' in this jurisdiction.

[49] This analysis comforts me that it would be proper to continue to use the traditional starting point of 30 years for cases of murder in this jurisdiction and then to factor in the aggravating and mitigating features of the offence to arrive at a final sentence. This court will therefore use the 30 years mark as the starting point in this offence and then factor in the aggravating and mitigating factors to arrive at the final sentence and then to make deductions for the plea.

The Aggravating Factors of this Case

[50] It is an aggravating feature of this case that this defendant pre-mediated to kill someone and took steps to carry out his plan.

[51] It is also a serious aggravating feature of this case that he used a firearm to carry out his plan.

[52] It is further aggravating that he donned a mask and lay in wait for the right moment to leap out and execute his plan.

[53] It is a serious aggravating feature that when he was told that his intended victim was not present he decided to turn his killing intention to another person who was present.

[54] It is an aggravating feature that this act was carried out in a public place without regard for the safety and life of others and that an innocent member of the public was killed.

[55] It is an aggravating factor that the firearm in this case has never been recovered and he has failed to assist the authorities in its recovery.

The mitigating features of this case

[56] The defendant has no previous convictions. Though he does not have positive good character, it is argued by the defence that this should be a mitigating feature of this case. It is usually considered a mitigating factor. I am reminded here that the importance of this factor will vary from case to case depending *inter alia* on the nature and seriousness of the commission of the offence. As Sir Dennis Byron CJ noted in **Desmond Baptiste v R** Criminal Appeal No. 8 of 2003:

> *"As to the fact that the offender was committing crime for the first time, it seems to us that the importance of this circumstance should be left to the discretion of the sentencer as a matter that is to be taken into account with all other mitigating circumstances of the offence. It must be stressed though that the more serious the offence, the less relevant will be this circumstance. In Turner v The Queen[8], a*

case of armed robbery, Lord Lane, CJ stated that "the fact that a man has not much of a criminal record, if any at all, is not a powerful factor to be taken into consideration when the Court is dealing with cases of this gravity". Conversely, the lack of a criminal record would be a powerful mitigating factor where the offence is of an insubstantial nature."

[57] This is a grave and serious offence. The manner of its commission was equally frightening. The fact that he has no previous conviction will have little weight by way of mitigation.

[58] The defence has also argued that the fact that he was 20 years old at the date of this offence and the inference which can be drawn that he was subjected to peer pressure and the offence was as a result of youthful stupidity should also be regarded as mitigating.

[59] With regards his age and maturity, I am equally reminded here that by Sir Dennis Byron in Baptiste that:

"On the issue of the 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 also take such factors into account."

[60] Here again the seriousness and gravity of this offence weighs heavily against this feature of the case operating as a substantial mitigating feature. I have weighed it in the balance.

[61] The defence has argued that because this defendant lacked the necessary parental guidance that should be weighed in favour as mitigating the sentence. I agree that this would set a dangerous precedent if this is to be viewed as mitigating. Our courts have many examples of persons similarly placed as this defendant who has gotten the maximum sentence of the court.[8]

[62] There is mitigation in the fact that he cooperated with the police. The Crown's guidelines suggested that this should not be so viewed since he had initially lied to the police. There is no doubt, however, he in fact subsequently confessed to the crime.

[8] See for example Nardis Maynard v R Criminal Appeal No. 12 of 2004

[63] There is some mitigation in his expression of remorse, though as mentioned earlier this is somewhat diluted as he appears to be more contrite about killing the wrong person.

[64] The defence asked that the character of the defendant be seen as mitigating. In this regard an argument was made that the defendant could be regarded as quiet with no signs of recidivism. The Crown's guidelines equally challenged this. Attention was drawn to the defendant's use of alcohol and marijuana. The point has been well made that these are factors which points to recidivism. I note that he was found guilty of marijuana use in January of this year.[9]

[65] As I turn to fashion the appropriate sentence in this case, it is useful that I examine other yardstick decisions of our courts.

The Case Law

[66] This Crown submitted four cases for the court's consideration. The first of these is **Nardis Maynard v R** Criminal Appeal No. 12 of 2004. In this case, the appellant was convicted of murder and sentenced to life. The Court of Appeal described the murder as being '*particularly vicious and cold-blooded'* outlining the facts as follows:

> *'Just after mid-night on 22nd March 2003, Maynard accosted Henry at Upper Market Street, Basseterre. The witness Marilyn Lowrie said that Maynard asked Henry for money, which it appeared that Henry gave him. Maynard advanced even closer to Henry with something in his hand in an aggressive manner. Henry had nothing in his hands. Another young man, Ingle Rawlins Junior, held Maynard's hand and told him to "chill out". Maynard pulled his hand away from Rawlins and launched an attack upon Henry by swinging his hand at Henry's chest and thigh area at least three times connecting with Henry's body on each occasion. Maynard then turned away, put his hand with the instrument under his shirt and walked away. As he turned away, Henry asked Maynard what he (Maynard) had done to him, to which Maynard responded "Jah Rastafari" and hurried away. Henry, who was sitting, tried to get up but fell into the street bleeding. He was taken to the Accidents and Emergency Department at the J.N. France General Hospital."*

[9] This factor has not been used as an aggravating feature.

[67] At the time of sentencing he was 22 years old and had an impeccable record. He grew up without a father and lacked parental guidance. On appeal the sentence of life imprisonment was upheld.

[68] The second is **Kamal Liburd and Jamal Liburd v R** Criminal Appeal Nos. 9 and 10 of 2003, two brothers ages 24 and 20 years were both charged for murder. Kamal was convicted of murder and was sentenced to life. Jamal was convicted of manslaughter and sentenced to 30 years. A summary of the evidence is as follows:

> *"The evidence is that Jamal was seated on a wall in Basseterre. Bart approached and threatened to slap him. An argument ensued. During the argument, Bart struck Jamal about the face or head. Jamal thereupon got up and moved away and Bart and Jamal threw bottles and stones at each other. Bart ran. Kamal and Jamal were then in hot pursuit of him. Kamal caught up with him (Bart); grabbed him and swung a club at his head. Bart avoided the blow and escaped Kamal's grasp. He ran pursued by Kamal and Jamal, both armed with sticks and bottles. Bart stopped running after awhile and began moving from side to side in the road in a squatting position. While he did that and had nothing in his hand, Kamal inflicted a blow with a club to his head. Bart fell to the ground. Jamal then threw a bottle which struck Bart on his head."*[10]

[69] The Court of Appeal upheld both the life sentence and the 30 years sentences.

[70] The third is **R v Lyndon Lambert** Criminal Case No. 57 of 2003, the defendant who was 20 years old beat and killed an old man and burnt his dead body up in a house to hide his crime. He was sentenced to life imprisonment.

[71] The fourth is **Java Lawrence v The Director of Public Prosecutions**, Criminal Appeal No. 1 of 2008. The salient facts show that:

> *"During a dance at the community centre in Hickman's village, in Nevis, following a day of Sunday cricket, some time after 9:00 p.m., while the 16-year old deceased was on the dance floor, [the defendant] standing outside the building, from through the louver window, shot the deceased just behind his left ear."*

[72] The deceased died from this injury and appellant was sentenced to life imprisonment which sentence was upheld by the Court of Appeal.

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[10] Factual narrative taken from a summary in Nardis Maynard at para 10.

[73] The defence asked that the court consider several cases. These cases have given me considerable assistance.

[74] The first of these is **R v Sylvester Lindsay** Criminal Case No. 49 of 2011. In this case the defendant was with a group who had spent most of the day drinking and smoking marijuana. They were driving about in a van and the defendant stated that he wanted to rob someone. It was dark in the evening when they came up to a man (the deceased) and his female friend and her child walking along the road. The defendant came out and there was a confrontation with the deceased who swung a bag at the defendant. The defendant fired three shots at the deceased, jumped back into the van and they drove off. The court found that the defendant had not planned to kill anyone, but that the defendant had carried the gun to carry out his robbery. The court found that he was a good candidate for rehabilitation and coupled with his guilty plea, the sentence was fixed at 22 years.

[75] The second case submitted by the defence is **Rudolph Lewis v R** Criminal Appeal No. 16 of 2009. The killing in this case was described as a crime of passion. The defendant believing that his common law had been unfaithful to him stabbed her 21 times with his penknife. She died as a result. He fled his home but eventually gave himself up to the police and confessed his crime. The sentence of life imprisonment was substituted by the court of appeal for a sentence of 25 years.

The Appropriate Sentence

[76] This has been one of those really serious murders here in St. Lucia. A masked man armed with a gun chose to lie in wait to kill someone. Without regard he launched his attack on a completely different person than the one he had planned to kill. Worse yet when he shot at that person, he missed and killed a completely innocent member of the public.

[77] There have been a number of serious aggravating factors in this case. I have asked myself having regard to all principles and the relevant case law whether this is a matter which

requires the maximum sentence of life imprisonment. When I compare it with the other cases it falls within the range of a very serious and grave crime.

[78] His various mitigating factors have led me however to finding that this is a case which requires a fixed determinative sentence. I have therefore used the starting point of 30 years and calculated that a notional sentence for all of the aggravation and mitigation is a sentence of 38 years.

[79] That being the case, having regard to the circumstances surrounding his guilty plea I will treat his plea as a plea coming at the first reasonable opportunity. He will therefore get a full discount. His sentence will therefore be a sentence of 25 years. The time spent on remand will be taken into consideration.

[80] I pray that he will use this time usefully and prepare himself for release at the end of his sentence.

[81] I thank both counsel for their industry and assistance in this matter.

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Darshan Ramdhani
High Court Judge (Ag.)