

SAINT LUCIA

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

CRIMINAL CASE NO. SLUCRD2010/0153

BETWEEN:

THE QUEEN

Claimant

and

ADRIAN ST. CLAIR

Defendant

Appearances:

Mr. Leon France for the Claimant
Mr. Al Elliot for the Defendant

2016: December 2.

JUDGMENT ON SENTENCING

- (1) **CUMBERBATCH, J.:** The defendant was indicted by the Director of Public Prosecution for the offence of murder for that he on the 1st May 2010 whilst intending to cause death caused the death of Cyprian St. Clair (the deceased) contrary to section 85(a) of the Criminal Code 2008. After much toing and froing the defendant entered a plea of guilty to manslaughter by reason of diminished responsibility. That plea was accepted by the Crown.

THE FACTS

- (2) The deceased and the defendant are brothers. At the time of the incident they lived at their mother's home in Delcer Choiseul. On Saturday the 1st day of May, 2010, about 5:00 a.m., Martha St. Clair heard the defendant's voice, speaking loudly. She observed the defendant leaving his

room with a cutlass under his right arm. She saw him walk out the house and towards the main road.

- (3) She then spoke to the deceased about the defendant's behaviour. The deceased who was at the time watching television got up and followed the defendant. The deceased called out to the defendant and requested the cutlass from him, at the same time approaching the defendant. The defendant pushed the deceased who fell to the ground as a result. The defendant then struck the deceased with the cutlass multiple times to the neck and other parts of his body. The defendant then walked away leaving the deceased for dead on the ground.
- (4) Dr. Stephen King performed a post mortem examination on the body of the deceased on Wednesday 5th May, 2010, and found the cause of death to be haemorrhagic shock secondary to incised wounds with a severed right vertebral artery.

THE PRE-SENTENCE REPORT

- (5) As mandated by law the court sought and obtained a pre-sentence report to assist it in determining an appropriate sentence in all the circumstances of this case. The report discloses that the defendant is an issue of the marriage between his parents John and Martha St.Clair. He had a comfortable childhood as he was afforded all the basic amenities for a comfortable living. At the time of the commission of this offence the defendant still resided at his parents' home.
- (6) Community residents are aware of the defendant's mental health issues. They state he would be seen alone and at times armed with a cutlass. He has not been involved in an altercation with anyone in the community and they expressed surprise on learning that he had taken his brother's life. They further state that they do not trust the defendant and do not want him back in their community.
- (7) Family members state that they are yet to understand why the defendant killed the deceased. They insist that the deceased who was the main breadwinner in the family never ill-treated the defendant and that as far as they were aware there was never any conflict between them. They further disclose that they feel hurt about this incident especially the fact that the defendant is unremorseful.

and that they do not want him to return to their household. His mother said she is at peace and does not have to worry about the defendant ostensibly because he is at the Bordelais Correctional Facility. His father is now deceased.

[8] I shall return to other disclosures in this report later in this judgment.

THE PSYCHIATRIC REPORTS

[9] The defendant was first admitted to the Golden Hope Hospital in or around March 13th 2000 where he was diagnosed with chronic schizophrenia. On May 26th 2010 Dr. Josh Rambally found at that time he was not on medication. He was psychotic and unfit to plead in a court of law. On August 11th 2010 he was on medication and revealed no psychotic features and was found to be fit to plead in a court of law.

[10] On October 8th 2010 the defendant was examined by Dr. Castillo who found him to display psychotic symptoms especially auditory and tactile hallucinations. He was kept on his medications.

[11] In a report dated January 7th 2014 Dr. Eve Felicien stated that she examined the defendant on the 28th August 2013 and in January 2014. She stated that he was a known patient to her and concurred with the diagnosis of schizophrenia. She set out his medical history and made an interesting revelation that is that the defendant started using cannabis as a teenager and uses 4-5 marijuana cigarettes daily.

[12] Dr. Felicien went on to state that the defendant has a history of poor family support and poor adherence to medication and follow up clinics. He performs better under close supervision which he did not get in his community. Schizophrenia is a chronic mental illness which can be controlled with antipsychotic medication but the patient may have periods of relapses which may be caused by social stressors and substance abuse. She diagnosed the defendant as having schizophrenia and substance dependence syndrome (cannabis and tobacco). She found at that time he was fit to plead in court.

- [13] In her report dated May 23rd 2016 for sentencing Dr. Felicien stated that at that time the defendant was on medication and stable. She has not received any reports of any relapse or aggressive behavior at the Bordelais Correctional Facility. However she finds that the defendant does not express any remorse and blames the deceased for bothering him for years.
- [14] The doctor went on to opine that the defendant at that time did not express any threats to members of the public or anyone else and is no more of a threat than the common man. But that condition is subject to change if the defendant becomes paranoid, a symptom of his chronic mental disorder, or if he relapses. In sworn testimony before the court Dr. Felicien further opined that substance abuse could trigger a relapse.

THE SUBMISSIONS

- [15] Both counsel relied on their written submissions which the court found to be quite helpful. Mr. Elliot for the defendant also helpfully provided copies of psychiatric reports made prior and subsequent to the homicide. It is clear from these documents that the defendant has had a history of mental illness from as far back as around the year 2000. Hence there could be no question that at the time of the commission of the offence for which he stands convicted he did suffer from a mental disorder.
- [16] Mr. Elliot went on to invite the court to consider on the bizarre utterances of the defendant in his statement to the police to wit:
- "When I was sleeping at my home, a feller came to me and told me to put that piece of iron there for him. . . That person was Cyprian, the devil father. I saw he had a dead cat in his hand. Cyprian took a big bag of stones and threw on me. The old wicked said to me that he is my boss. He told me that when he is ready to get me, he will get me. He struck me several times with a sea shell. Cyprian had my cutlass and shoe running after me and boys is to drink my blood. I went down the road by Mekla and I saw the police. I then saw Cyprian sitting on the ground."*
- [17] Mr. Brette for the crown reviewed the facts of the case together with the psychiatric and pre-sentence reports. He set out what he considered to be the aggravating and mitigating factors herein and urged the court to tailor a sentence taking into account the defendant's chronic mental disorder, symptoms of paranoia, the aggravating factors and the possibility of relapse.

THE LAW

[18] I will consider the aggravating and mitigating factors herein. I find that having regard to the defendant's mental disability that a consideration of the classical principles of sentencing save and except rehabilitation is inappropriate.

[19] I find the following to be the aggravating and mitigating factors herein.

AGGRAVATING FACTORS

1. Multiple incised wounds were inflicted on the deceased.
2. The use of a cutlass on the deceased who was unarmed.
3. The defendant's lack of remorse.
4. The prevalence of the offence.

MITIGATING FACTORS

1. The defendant's mental illness.
2. The guilty plea which obviated the need for a trial.

[20] I have carried out a balancing exercise with the aggravating and mitigating factors and find that the aggravating factors outweigh the mitigating ones.

SENTENCE

[21] The term mental disorder is defined in the Interpretation section of the Criminal Code as:

"Mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind, except intoxication"

[22] Section 85 (a) of the Criminal Code provides thus:

A person commits murder if he or she causes the death of another person-
(a) intending to cause death.

[23] Section 90 of the Criminal Code provides:

1. *If a person kills or is a party to the killing of another person, he or she shall not be convicted of murder if he or she was suffering from such mental disorder (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his or her mental responsibility for his or acts in doing or being a party to the killing.*
2. *On a charge of murder, it shall be for the defence to prove that the person charged is by virtue of this section not liable to be convicted of murder.*

3. *A person who but for this section would be liable to be convicted of murder shall be liable to be convicted of manslaughter.*
 4. *The fact that one party to a killing is by virtue of this section not liable to be convicted of murder shall not affect the question whether the killing amounted to murder in the case of any other party to the killing.*
- [24] The defendant's history of mental illness aforesaid is sufficient justification for the acceptance of the plea of diminished responsibility. Thus there can be no doubt that this case falls within the parameters of section 90 of the code.
- [25] I will now consider and apply the principles set out in the relevant authorities on sentencing in the case at bar.
- [26] In the local decision of **The Queen v Andrew Kagan Richardson** Benjamin J embarked on a distillation of the principles to be considered and applied by the sentencer in matters of this nature. At Paragraph 61 the learned trial judge opined thus:
- i. *The Court must obtain and take into account the expert medical reports and the presentence report.*
 - ii. *The offender must be dealt with in the manner the Court deems to be most appropriate in all the circumstances of the case.*
 - iii. *Consideration must be given to the seriousness of the offence.*
 - iv. *Any possibility of the need to protect the public from serious harm by the offender in cases of violent (or sexual) crime must be considered.*
 - v. *The rehabilitation of the offender is to be treated as a primary objective of sentencing.*
 - vi. *In appropriate cases, the Court can consider a non-custodial sentence.*
 - vii. *The Court must weigh the likely effect of a custodial sentence on the condition of the offender and on the treatment of the offender.*
 - viii. *The seriousness of the punishment must be commensurate with the gravity of the offence, and*
 - ix. *The Court can impose a term longer than is commensurate with the seriousness of the offence including an indeterminate term where the protection of the public from serious harm from the offender is in its opinion required provided that its opinion is so stated in*

open
Court and explained to the offender in ordinary language.

[27] I also find the dictum of Lord J in **R v Chambers** to be most instructive.

"In diminished responsibility cases there are various courses open to a judge. His choice of the right course will depend on the state of the evidence and the material before him. If the psychiatric reports recommend and justify it, and there are no contrary indications, he will make a hospital order. Where a hospital order is not recommended, or not appropriate, and the defendant constitutes a danger to the public for an unpredictable period of time, the right sentence will, in all probability, be one of life imprisonment.

In cases where the evidence indicated that the accused's responsibility for his acts was so grossly impaired that his degree of responsibility for them was minimal, then a lenient course will be open to the judge. Provided there is no danger of repetition of violence, it will usually be possible to make such an order as will give the accused his freedom possibly with some supervision.

There will however be cases in which there is no proper basis for a hospital order, but in which the accused's degree of responsibility is not minimal. In such cases the judge should pass a determinate sentence of imprisonment, the length of which will depend on two factors: his assessment of the degree of the accused's responsibility and his view as to the period of time."

[28] The Court of Appeal of Victoria in **The Queen v Leanne Walsh 1998 NTSC 30** provided the following guidelines applicable for cases of mental illness falling short of insanity, to wit,

1. *It may reduce the moral culpability of the offence, as distinct from the prisoner's legal responsibility where that is so, it affects the punishment that is just in all the circumstances and denunciation of the type of conduct in which the offender engages is less likely to be relevant sentencing objective.*
2. *The prisoner's illness may have a bearing on the kind of sentence that is imposed and the conditions in which it should be served.*
3. *A prisoner suffering from a serious psychiatric illness is not an appropriate vehicle for general deterrence.*
4. *Specific deterrence may be more difficult to achieve and is often not worth pursuing as such.*
5. *Psychiatric illness may mean that a given sentence will weigh more heavily on the prisoner than it would on a person in normal health."*

- [29] I will go on to refer to the dictum of Auld LJ in **R v Slater (2005) EWCA Crim at paras 16 - 20** which I find to be most helpful in balancing the various considerations on sentencing to wit:

"Assessing the form and severity of sentence in manslaughter cases by reason of diminished responsibility is notoriously difficult. So many factors often contribute to the death: the relationship of the parties one to the other, the strains if any imposed on the relationship, the degree of diminution of the defendant's responsibility or blameworthiness for the death by reason of his or her abnormality of the mind, the deliberation or otherwise of the fatal attack and the brutality with which it is conducted and the defendant's attitude to and/or appreciation of the enormity of what he or she has done. These and other factors invariably call for a balance of considerations between fixing on a disposal that reflects the moderating circumstances and their degree of the offence, differentiating it from murder, and those that identify nevertheless serious culpability, calling for mark by the Court of public disapproval and imposition of punishment."

- [30] Thus, emerging from the authorities hereinbefore mentioned are the following principles for the court's consideration in determining an appropriate sentence in a case of diminished responsibility. The court is required to consider all the facts and circumstances of this case and assess the defendant's blameworthiness or culpability. In so doing the court must balance the seriousness of the offence with the effects of the mental disorder suffered by the defendant and accordingly determine the level of residual responsibility left in him. Accordingly his mental disorder though a mitigating factor it does not absolve him of responsibility for his actions. The court must also consider whether the defendant poses a danger to family members and members of the community.

- [31] The defendant committed a most brutal and heinous offence against his brother. There were approximately 15 incised wound inflicted to the body of the deceased all of them to his neck and body from behind as he lay on the ground. At a time when he was medicated he had this to say to the probation officer as disclosed at page 4 of the pre-sentence report.

"During an interview conducted at the Facility the defendant informed the writer that he was involved in an altercation with the deceased (his brother) who was always provoking him. On the day of the incident his brother was armed with a pick axe with which he hit him, and he in turn lashed his brother in the neck area with a cutlass. According to the defendant the night prior to the incident his brother attacked him for marijuana that he knew nothing about. He further disclosed that his brother was always harassing him and they were always involved in a dispute. The defendant informed the writer that he is now at peace because his brother was of unsound mind. He further added that he was frustrated and always said to his brother that one day he will stop him."

[32] As stated aforesaid both family and community members have voiced their concerns for their own safety if the defendant is returned to the community. It is clear that though medically stable he is unremorseful and has not taken responsibility for his actions nor has he come to terms with the enormity of his crime.

[33] I find that the aggravating factors outweigh the mitigating ones and that the defendant's degree of responsibility for his actions is not minimal. The opinions expressed by Dr. Felicien in her sworn testimony and latest report aforesaid provide compelling evidence that the defendant though stable may relapse by virtue of the nature of his illness or because of stress or substance abuse. I find that on the question of substance abuse the defendant seems to be in denial. His family members state that his use of cannabis caused him to be expelled from the home as a teenager an addiction which he denies at page 3 of the Pre-Sentence Report.

[34] I further find that he is now considered stable by the Psychiatrist because he is in a controlled environment where his medication is administered to him daily. Though his family members state that they will 'support' him they do not want him back in the household for fears expressed aforesaid.

[35] In her reports Dr. Felicien made the following recommendations for the defendant's health care and rehabilitation;

1. Stop all substance use (cannabis and tobacco).
2. Continuation of antipsychotic medication.
3. Drug rehabilitation at Turning Point.
4. Psychotherapy.
5. Skills training.
6. Follow up clinic with a mental health team.

[36] I find for the reasons hereinbefore stated the defendant poses a threat to his family and community members at this time. Sections 1099 (3) & (5) of the Criminal Code 2008 provide thus.

"Before passing a custodial sentence other than one fixed by law on an offender who is or appears to be mentally disordered, a Court shall consider-

(a) Any information before it which relates to the offender's mental condition (whether given in a medical report, a pre-sentence report or otherwise); and

(b) the likely effect of such a sentence on that condition and on any treatment which may be available for it."

In this section-

'medical report' means a report as to an offender's mental condition made or submitted orally or in writing by a qualified registered medical practitioner,

'qualified' in relation to a registered medical practitioner, means appearing to the Court to have special knowledge and experience of cases of mental disorder.'

[37] Section 1100 (3) of the said Code provides thus:

'Nothing in this Code-

(a) Requires a Court to pass a custodial sentence, or any particular custodial sentence, on a mentally disordered offender, or

(b) restricts any power which enables a Court to deal with a mentally disordered offender in the manner the Court considers to be most appropriate in all the circumstances.'

[38] Parliament has by the aforesaid provisions provided the court with a wide range of options in sentencing an offender who is mentally disordered. It is common ground that the defendant suffers from a chronic mental illness which requires continuous treatment. Indeed the first medical report makes mention of his lack of compliance with his medication and clinic visits. This was repeated by Dr. Felicien in her report on the history of the defendant's mental illness. She went on to state that he also experienced poor family support and supervision both of which are necessary inputs for the treatment of his condition.

[39] The Pre-Sentence Report discloses that family members have made it clear that the defendant is not welcome at their homes. Accordingly there being an absence of secure facilities at the Wellness Centre for his accommodation the court is left with no alternative but to have the defendant confined at the Bordelais Correctional Facility. Sections 1099 and 1100 aforesaid empower the court to deal with a mentally disturbed defendant in a manner it thinks appropriate. Though I find the defendant to be a danger to his family and community members I do not consider an indeterminate sentence to be appropriate as there may be an improvement in his condition with treatment and rehabilitation.

[40] Thus the defendant will be held at the Bordelais Correctional Facility at the court's pleasure. The recommendations of Dr. Felicien for his care and rehabilitation shall be implemented and continued.

1. Stop all substance use (cannabis and tobacco).
2. Continuation of antipsychotic medication.
3. Drug rehabilitation at Turning Point.
4. Psychotherapy.
5. Skills training.
6. Follow up clinic with a mental health team.

(41) He shall be held for at least 10 years before he is brought to the High Court for a review of his condition. He shall be released upon the Court being satisfied that he no longer poses a threat to his family members and community. He shall receive periodic visits by the consultant psychiatrist at the Bordelais Correctional Facility. The consultant psychiatrist shall provide the court with a report in the month of January of each year on the defendant's progress.


FRANCIS M. CUMBERBATCH
HIGH COURT JUDGE

