SAINT LUCIA

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

CASE NO. SLUCRD2016/0373
BETWEEN:

THE QUEEN

Complainant

-v-

NEIL WILSON

Defendant

Appearances:
Mr. Leon France for the Crown
Mr. Leslie Mondesir for the Defendant

2017: October 26;
November 23.

DECISION ON SENTENCING

[1] **Taylor –Alexander J:** The Defendant is to be sentenced following his guilty plea to Non-Capital Murder. His plea was taken on the 9th of March 2017, and the Sentencing Hearing followed on the 26th of October 2017.

Facts

[2] The germane facts, agreed upon by the parties are that, between Monday the 21st of March 2016, and Thursday 24th of March 2016, the Defendant, in a fit of anger, attacked the Deceased, whom he caught stealing from his marijuana home garden. The Deceased was hit with a post, tied, gagged and hogtied, after which he was buried in a shallow grave, which was originally dug for a pit toilet. Overwhelmed by a guilty conscience, the Defendant confessed his actions, first to his sister and then to a friend. His sister reported the matter to the Police.

[3] Acting on information given by the Defendant's sister, on Friday the 24th day of March 2016, at about 5:54 am, WPC Delia Samuel of the Babonneau Police Station, along with personnel from the station left for the Defendant's dwelling. In the presence of the Defendant, the police dug a disturbed area behind the Defendant's house. The area dug was about three (3) feet by five (5) feet. The Deceased's body was discovered in a crouched position with hands and knees bound with blue rope and the ankles were bound with a piece of cement rope. The body was also gagged with a yellow rag. He was found dead, with what appeared to be blood coming from his nose. Both of the deceased eyes had popped out of his head.

[4] The Post Mortem Report revealed the cause of death as being head injury from force blunt force trauma and suffocation from burial.

Plea in Mitigation

[5] The plea in mitigation was advanced by Mr. Leslie Mondesir for the Defendant. The Defendant is a 29 year old man, who prior to his incarceration had a fixed place of abode at Plateau Babonneau. He is a high school drop-out with weak literacy skills. In the past he has been gainfully employed as a mason, a tour guide and as a caretaker of horses. He had been virtually abandoned by his mother in his childhood and was raised by his community. Mr. Mondesir asks the Court to consider the Defendant's genuine remorse, his co-operation with the police from the outset, and his early entry on the guilty plea scheme. He submits that a reasonable term of years is an appropriate penalty in this matter.

The Pre-Sentence Report

[6] The Defendant is portrayed as a secondary school drop-out who grew up in extremely impoverished circumstances. He and his siblings were largely abandoned by their carefree mother, who left them to be raised by their grandmother. The Defendant in his younger years, stole to eat, and developed a reputation as a thief, which reputation continues today. He is however reflected as a forthright person, who would admit to his wrongdoing whether caught or not. He admits to stopping his stealing habits when he had been placed on probation. He states that he started farming land at Plateau, Babonneau, given to him by his grandmother. He chose to cultivate marijuana as a means to earn money to care for himself and his children.

[7] The Defendant admits to being an abuser of cannabis. He admitted smoking marijuana both before and after he committed the offence. He stated that shortly after committing the offence, he began to feel bad and took the decision to commit suicide. He decided to admit committing the offence to his sister, after which he would commit suicide. His plan of suicide was thwarted by his sister who after being told of the Murder, called the police. The police confronted him the day after the Murder as he returned to his farm.

[8] The Writer of the report acknowledged that Probation Services had earlier interacted with the Defendant on his previous and past convictions. Both in the previous report and in the present report, the Writer found the Defendant to be susceptible to being easily influenced and is in need of significant personality building, life coaching and support, in order to mitigate chances of re-offending.

Psychological and Psychiatric Reports

[9] Psychological and psychiatric reports were commissioned for the Defendant and at the request of his Counsel Mr. Mondesir. The Defendant was not known to Dr Guruswarmy, the Consultant Psychiatrist who assessed him on the 16th of October 2017. Dr Guruswarmy reported that the Defendant suffers from Moderate Depressive Disorder with guilt feelings and Antisocial Personality Disorder. The Defendant was also reported to have had a past history of cannabis dependence syndrome. It was Dr Guruswarmy's opinion, that the Defendant displayed no psychotic features. Clinical Psychologist, Ms Ginette Nelson also assessed the Defendant, to determine his current level of psychological functioning. She concluded that the Defendant did not possess psychopathic characteristics, but had a proclivity for aggression which may be as a result of a combination of psychological dilemmas, inclusive of prior trauma and feelings of inferiority. Additionally, the Defendant possessed a number of antisocial personality traits warranting a diagnosis of Anti-Social Personality Disorder, which should be given attention.

The Crown's Submissions

[10] The Crown highlighted the previous convictions of the Defendant, in particular the conviction for possession of a firearm. The Crown also notes the risk factors of cannabis use and the present admission of its continued use, the self-proclaimed occupation of marijuana farming, his low level

literacy, as well as delinquency during a previous probation order. The Crown submits that in the circumstances, notwithstanding the non-violent nature of the Defendant's personality declared by community residents, the pre-sentence report is not favourable to the Defendant. The Crown reminded the Court, that alcohol and illegal drug consumption are two triggers of recidivism and highlighted the cases of **The Queen v Dave Samuel** SLUCRD 2009/1101 and **The Queen v Hermus Frederick**, SLUCRD 2009/0031, from this jurisdiction, where the court acknowledged that fact.

[11] The Crown submits that the Court is duty bound to consider two fundamental factors; the facts and circumstances surrounding the commission of the offence and the character and record of the convicted person. See: **Harry Wilson v the Queen** Crim App No. 30 of 2004, per the dicta of Rawlins J. Mr. Leon France, Crown Counsel identified the following as the Aggravating and Mitigating factors.

Aggravating

a. The offence was planned and premeditated – it appears that the offence was in retaliation to the deceased's stealing from the Defendant sometime prior.

b. The nature and extent of the Deceased's injuries – Injuries to the head, multiple contusions and gagging.

c. Dirt discovered in the stomach is indicative that when the deceased was buried he was still alive.

d. The deceased was unarmed.

e. The offence was egregious – the Defendant's hands and feet were bound at the wrists, knees and ankles in a 'hogtie' fashion, he was gagged beaten and then buried alive.

f. The Defendant has previous convictions especially one for possession of a firearm.

g. A negative pre-sentence report.

h. The seriousness of the offence- a life was lost.

i. Prevalence of the offence in St. Lucia and OECS jurisdiction.

Mitigating

a. Early guilty plea – obviating the need for a trial – full reduction in sentence.

[12] The Crown conceded that, as indicated by the Defendant at paragraph 10 of his plea in mitigation, "life imprisonment for Murder is by no means the norm or starting sentence. The appropriate sentence is determined based on the particular facts. The Crown relied for that contention on the dicta of Blenman J, as she then was, in **The Queen v Rudy Monelle** Criminal Case No: 0015/2007 who said:—

> *"The law now requires the trial judge to conduct a sentencing hearing and to determine the appropriate sentence to impose on a defendant who is convicted of murder."*

[13] The Crown submits that the facts of the Defendant's case, as manifested in the aggravating factors, the risk factors identified in the Pre-Sentence and Psychological Assessment Report, gravitate towards the imposition of a term of life imprisonment. The Crown further submits that apart from the violence of the offence, taking it over the threshold for the imposition of a life imprisonment sentence, the applicable principle of sentencing does likewise.

Victim Impact Statement

[14] Mr. Joseph Monlouis, father of the Deceased admits to still having difficulties coping with the death of his son. He said that to have his last son meet his demise, in such a manner, at a tender age is not easy, and that he hoped that it would have been his son to bury him and not the other way around. He is unaware of the reason why the Defendant committed the act against his son. The father stated that his grief is made all the harder, by the fact that the Deceased and his five siblings were abandoned by their mother and he alone struggled with them. He craves justice for his son.

The Sentence

[15] The Statutory Penalty upon conviction for non-capital murder in Saint Lucia, is a sentence of life imprisonment.

[16] There continues to be a discretion reserved to a sentencing Judge to impose a sentence commensurate with the gravity of the offence and the circumstances of the offender. In **Harry Wilson v The Queen**, (*supra*) Rawlins JA as he then was explained this obligation thus:—

> *"it is a mandatory requirement in murder cases for a Judge to take into account the personal and individual circumstances of the convicted person. The Judge must also take into account the nature and gravity of the offence, the character and record of the convicted person; the factors that might have influenced the conduct that caused the murder, the design and execution of the offence, and the possibility of reform and social re-adaptation of the convicted person".*

[17] I am also keenly aware of Section 1097(2)(b) of the Criminal Code of Saint Lucia. It allows for 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.

[18] The sentences imposed for non-capital murder in the OECS jurisdictions vary between 18 years to life imprisonment. Often, these sentences are informed by fixed penalties of life imprisonment, in some jurisdictions, to the particular facts and circumstances in other jurisdictions. Some of the cases out of the OECS, to which I had recourse, are:-

DPP v Crispin Prentice, SKBHCR 2004/0061**,** St Christopher and Nevis, the accused, a 23 year old with no previous convictions was convicted of murder and sentenced to 25 years imprisonment;

DPP v Che Gregory Spencer, SKBHCR 2008/0004, St Christopher and Nevis, the accused was convicted and sentenced for a murder using a firearm. The DPP asked for the death penalty. The accused was sentenced to 18 years Hard Labour;

The Queen v Kelvil Nelson ANUHCR2008/0037 the Defendant was sentenced to 22 years with Hard Labour. On appeal against conviction against Murder, The Court of Appeal substituted a conviction of Manslaughter; and allowed the appeal against sentence to the extent that the sentence of 22 years was varied to 12 years.

Nardis Maynard v The Queen No.12 of 2004, Saint Christopher and Nevis, the appellant was convicted of Murder and sentenced to imprisonment for life. At the time of the sentencing, he was 22 years old and had an impeccable record.

The Queen v Rudy Monelle Criminal Case No: 0015/2007 a case where the deceased and the Defendant were in a domestic relationship, and the circumstances were particularly heinous, the Defendant burned the deceased. She was reported to have 100 degree burns. The Defendant was sentenced to life imprisonment.

The Queen v Marlon Charles SLUHCRD2007/1340. The Defendant burgled the premises of the victim, and tied him up. He was later found by persons in a yard opposite to his home. He was tied up and lying covered with glory cedar branches in a dark area. The Defendant had previous convictions for house breaking and there was no remorse detected. He was sentenced to 20 years.

The Saint Lucia case of the **Q v Clinton Gilbert and Another** SLUCHRD2006/0020 and SLUCHRD2006/0026. Ramdani J in his judgment on sentencing, relied on what he called the traditional starting point, of 30 years, for cases of Murder in this jurisdiction, although he acknowledged that "*starting points may become irrelevant when the offence is so serious in the context of its aggravation that no other punishment is appropriate other than a term of life imprisonment.*" In that case both men were sentenced to life imprisonment.

Life imprisonment as a Commensurate Punishment

[19] In the UK, under the under the Criminal Justice Act (CJA) 2003, a mandatory life sentence is imposed in all cases of Murder. That provision is however mitigated by legislated provisions, requiring all Courts, passing a mandatory life sentence, to order the minimum term the prisoner must serve, before the Parole Board can consider release on licence, unless the seriousness of the offence is so exceptionally high that the prisoner is required to serve a whole life order. In ***R v McLaughlin and R V Newell*** [2014] EWCA Crim 188, the Court of Appeal, held that whole life sentences imposed pursuant to section 269 of the CJA, in exceptional circumstances, does not violate the rights of the individual under the European Convention as there is an adequate review mechanism where such sentences are imposed. examples of cases of murder in which a "whole life order" may be the appropriate starting point are : (i) the murder of two or more persons where

each murder involves a substantial degree of premeditation, the abduction of the victim, or sexual or sadistic conduct; (ii) the murder of a child if involving the abduction of the child or sexual or sadistic motivation; (iii) a murder for the purpose of advancing a political, religious or ideological cause; or (iv) a murder by an offender previously convicted of murder.

[20] Closer to home, Barrow JA, in **Kent Calderon v Queen**, and **Derek Desir v Queen**, Court of Appeal Decision No.9 of 2006 and 10 of 2006 respectively, and relying on A-Gs Ref (No. 32 of 1996) [1997] 1 Cr App R (S) 261 opined that *"An indeterminate sentence will be appropriate,……..., in the case of a murder that was committed with the degree of violence such as was used in this case and in the case of offenders whom pre-sentence reports show to be violent and dangerous persons, as was shown in this case. In such a case it may be proper for the Court to decide that* ***the offender would constitute a serious danger to the public for a period of time which could not reliably be estimated at the time of sentence****" (my emphasis)*

[21] In this present case, the Defendant has no less than 5 previous convictions for unlawful entry, Assault, stealing and possession of a firearm, the latest in time being committed in 2012. The Pre-Sentence Report reflects the Defendant as being very malleable and requiring significant personality building, life coaching and support. The psychological report of Ginette Nelson reflects the Defendant as possessing a number of personality traits including his failure to conform to societal norms, irritability and aggression and reckless disregard for the safety of self and others. The general tenor of these reports however, is that the Defendant poses a threat more to himself than to the society, and that he is an ideal candidate for intense rehabilitation, geared toward personality building. I therefore cannot easily come to a conclusion that the Defendant poses a risk to society for an indeterminate period. I am satisfied that after a period of intense rehabilitation, he would no longer be considered a threat to society or to himself.

Practice Direction No. 1 of 2015 (Early Guilty Plea)

[22] The practice direction makes all indictable matters eligible for inclusion in the Early Guilty Plea Scheme, and a Defendant who pleads guilty at an Early Guilty Plea hearing will qualify for the maximum appropriate sentence reduction. The Defendant in this case, took advantage of the scheme and intimated his guilt at the first available opportunity. That fact and my conclusion

above, that the Defendant does not pose a risk to society for an indeterminate period, militates against a sentence imposed for an indeterminate period.

The Starting Point

[23] In the well-known case of **Rv Sargeant,** [3] 60 Cr. App. R. 74 at page 77 Lawton LJ explained the approach to sentencing thus:-'What ought the proper penalty to be? We have thought it necessary not only to analyse the facts, but to apply to those facts the classical principles of sentencing. Those classical principles are summed up in four words: retribution, deterrence, prevention and rehabilitation. Any Judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts of the case to see which of them has the greatest importance in the case with which he is dealing . This approach was adopted by our Court of Appeal in **Desmond Baptiste et al V R** Criminal Appeal No. 8/2003

[24] The Defendant is a repeat offender and the offence committed was senseless and was heinous. The victim was subject to a pre mature burial, and any hope of him digging himself out was deliberately interdicted by him being hogtied and gagged. It was the cruellest method of execution. So brutal was his distress, that when his body was recovered, his eyes had popped out of their sockets from intense suffocation. Without a doubt this offence is to attract a custodial sentence with retribution and both general and specific deterrence being the main objective in sentencing. The Court is required to show public revulsion for the offence and punish the offender for his wrong. Given the recommendations of the Pre-Sentence Report for intense intervention, rehabilitation is also to be prioritised.

[25] In **R v Taueki, Ridley and Roberts** [2005] NZLR 372, a decision of the Court of Appeal of New Zealand, the Court clarified that the "starting point" should be understood as the sentence appropriate when aggravating and mitigating circumstances relating to the offending are taken into account, but excluding aggravating and mitigating features personal to the offender.

[26] The Court relying on another New Zealand case of ***R v Mako [2000] 2 NZLR 170.*** said thus:-

> *"The modern approach to sentencing uses as a reference point a starting point taking into account aggravating and mitigating features of the offence, but excluding mitigating and*

aggravating features relating to the offender. Put another way, a starting point "is the sentence considered appropriate for the particular offence (the combination of features) for an adult offender after a defended trial":

[27] In **Aguillera et al v The State Crim All 5,6,78 of 2015** the Court of Appeal of Trinidad and Tobago adopted the approach in **R v Taueki, Ridley and Roberts,** to determine a starting point sentence and emphasised that a sentencing Judge needs not only to identify such factors, but also to evaluate the seriousness of a particular factor. The evaluative task is an important aspect of sentencing: without it, there would be a danger of a formulaic or mathematical approach to the assessment of sentencing starting points.

[28] In the present case, the following factors contribute to the seriousness of the offence; the very high degree of criminality involved in the murder; (a) The murder was particularly brutal. The deceased had no chance of survival. (b) There is no evidence that the Defendant was provoked or that the Defendant was attacked by the deceased. (c) The murder was carefully executed; (d) the Defendant seemed aware of what the result of his actions would be, (e) the attack of the deceased with a post immediately before he was tied up, in order to restrain him. All these factors show a degree of callousness of the Defendant. That the Defendant went home thereafter and slept like a baby, speaks to his indifference and a reckless disregard for what he had done. Admittedly the Defendant acknowledges that he had been on a cannabis consumption binge that day, which binge continued after the premature burial. The hindsight of the following day was devastating on him.

[29] Although the crown submits that the events were premeditated, my view is that there was not a long premeditation to kill.

[30] I have considered the sentences imposed in the earlier referenced cases and the aggravating and mitigating factors of the offence and fix a starting point of 40 years. After the considered application of the aggravating and mitigating facts of the offender, In particular the early guilty plea, the lack of premeditation and the genuine remorse shown, the Defendant has benefitted from a total reduction of 15 years from the starting point. The Defendant is therefore sentenced to imprisonment for a period of 25 years with Hard Labour.

[31] The following other conditions are imposed, consistent with recommendations arising from the Pre-Sentence Report, the psychological report and in keeping with the Court obligation to factor the rehabilitation of the offender, as one of the aims of sentencing:—

(i) The Defendant is to be enrolled in Anger Management Counselling or Anger Replacement Therapy (ART), as the case may be;

(ii) The Defendant is to be enrolled in an educational advancement program available at the facility and suited to the ability of the Defendant;

(iii) The Defendant is to undergo drug and alcohol rehabilitation therapy;

(iv) The Defendant is to undergo character building and social re adaptation therapy whether through the medium of religious guidance and instruction or otherwise, in so far as the same is available at the facility;

(v) The Defendant is to issue a letter of apology to the family of the deceased's father, in order to assist him in finding closure;

(vi) The Defendant is to be credited with time spent of remand.

V. Georgis Taylor-Alexander

High Court Judge

BY THE COURT

REGISTRAR