

IN THE EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE

DOMHCR2015/0004

THE STATE

V

DANIEL ELTON BANNIS

Appearances:

Ms Sherma Dalrymple for the State

Mr Tiyani Behanzin for the defendant

2018: December 3rd

2019: February 7th

JUDGMENT ON SENTENCING

- [1] CHARLES-CLARKE, J.: The defendant was indicted on the 10th of April 2015 for the murder of Julius Joseph committed on the 14th day of May 2013 at Castle Bruce in the parish of St. David in the Commonwealth of Dominica.
- [2] On 3rd December 2018 the defendant pleaded not guilty to murder but guilty to manslaughter. The Director of Public Prosecutions accepted the plea. A social enquiry report was ordered by the court and the matter was adjourned for the prosecution and defence counsel to file sentencing submissions and for a sentencing hearing to be held.

- [3] The agreed statement of facts indicates that the deceased who lived alone at the time of the incident was last seen alive when he **left Symbert Wiltshire's bar** to retire to his home nearby on Monday 13th May 2013 at about 9:30 pm.
- [4] About 5:00 am the next morning Ernest Frampton of Castle Bruce was in his car relaxing when the defendant entered his car and started searching it. Frampton noticed that the defendant was wearing a grey short pant and was wet. Frampton also noticed that the defendant was hiding a knife under his armpit. He confronted the defendant who said that he was looking for Frampton to give him a cigarette. After he was confronted by Frampton the defendant left.
- [5] At about 5:45 am that same morning Augustus Darroux of Castle Bruce was jogging along the Castle Bruce Highway when he found the lifeless body of the deceased lying on his stomach face down on the northern side of the road close to the deceased's garden and his galvanize shack. Augustus Darroux noticed the deceased was bleeding from wounds to his back and chest and was clothed in a white striped under wear and a multi-coloured shirt. The matter was reported to the Castle Bruce Police station.
- [6] On Thursday 16th May 2013 during the wee hours of the morning the police went to the home of the defendant at Senhouse Castle Bruce but the defendant escaped. The police found a black handled knife which was hidden under a **mattress inside the defendant's home.**
- [7] On the night of Thursday 16th May 2013 police officers led by Sgt. Jeffrey James went to a house at Castle Bruce where the defendant was apprehended and arrested on suspicion of committing the murder of Symbert Wiltshire.
- [8] The defendant gave a caution statement where he admitted stabbing the deceased following an altercation after the deceased accused him of stealing his money and items from his place. According to the defendant during the altercation the deceased held onto his neck and shirt. In trying to release the

deceased's hold on him the defendant tripped and fell to the ground with the deceased over him. The defendant removed the knife from his pocket and stabbed the deceased several times all over his body. He then fled the scene with the knife which he hid under a mattress at his house at Castle Bruce.

[9] When confronted by the police the defendant identified the knife found at his residence as the knife he had used to fatally stab the deceased. Later at a custodial interview under caution the defendant confessed to stabbing the deceased.

[10] A Social Inquiry Report (The Report) dated December 8, 2017 which was prepared as part of the sentencing process highlights the childhood upbringing, economic status, familial and community relations and the behavior and character of the offender.

[11] The relevant facts indicated by the Report are as follows:

- i) The Defendant was raised by his mother and did not have any relationship with his father. His mother migrated to Tortola when he was a little child and he was raised by his maternal grandparents who together with his maternal aunts provided emotional, moral and financial support. Along with his two other siblings he visited his mother every year during the summer and developed a close bond.
- ii) **At age thirteen he was thrown out of his grandparents' home** and thereafter was responsible for himself. During his childhood and his teenage years he maintained a good relationship with his family members particularly with his twin brother.
- iii) The Defendant completed his secondary education at Castle Bruce Secondary School where he attained five CXC subjects. Upon completion of secondary school he migrated to Tortola, then St Martin and finally Anguilla.
- iv) The defendant is married although separated as a result of his incarceration and has three children all of whom reside in Anguilla.

v) His is skilled in tiling, plumbing and painting. He last worked at a restaurant in Anguilla.

[12] From the Report **members of the defendant's family highlighted positive traits** about him. He was described by his mother as a happy individual with a big heart, non-aggressive and very protective of his family. She noted that he encountered difficulties growing up but believes he had earned a level of respect within the community. She stated that the defendant had been admitted at the Acute psychiatric unit and that he should receive psychological care. His siblings described him as loving, friendly, non-violent with a passion for music. His sister noted his use of marijuana when he began socializing with friends. His twin brother with whom he shares a close bond described him as a normal individual who was not of a violent nature.

[13] Mixed sentiments were revealed by members of the community some of whom described the defendant as a quiet individual while others described him as aggressive and difficult to deal with.

[14] The defendant revealed to the social worker that he is not a first time offender. The social worker noted that the defendant maintained his innocence although he pleaded guilty telling her that his plea was made in order to obtain a reduced prison sentence.

[15] The deceased daughter indicated that the untimely death of her father was a tragedy that brought pain to her family. Although still aggrieved she has forgiven the defendant.

[16] Written submissions on sentence were filed by State Counsel Ms Sherma Dalrymple and Mr Tiyani Behanzin for the defence.

[17] At the start of the sentencing **hearing it was brought to the court's attention that** the defendant had at first admitted to the social worker that he committed the

offence but later informed her that he was innocent and that he had pleaded guilty in order to get a reduced sentence. The court enquired of defence counsel whether he had seen this statement and gave the defence counsel time to take further instructions from the defendant.

- [18] I refer to the learning in Archbold 2000 at para. 4 -103 on ambiguity in plea which states:

‘It is important that there should be no ambiguity in the plea, and that where the defendant makes some other answer than not guilty or guilty care should be taken to make sure that he understands the charge and to ascertain what the plea amounts.’

Para 4-104 states:

‘If the defendant pleads guilty, and it appears to the satisfaction of the judge that he understands the effect of his plea his confession is recorded, and sentence is passed forthwith, or he is remanded to again be brought up for judgement. The responsibility of pleading guilty or not guilty is that of the defendant himself, but it is the clear duty of defence counsel to assist the defendant to make up his mind by putting forward the pros and cons of a plea, if need be in forceful language, so as to impress on the defendant what the result of a particular course of conduct is likely to be.’

- [19] In the instant case after explaining to the defendant and counsel that the plea must be unequivocal the matter was stood down for counsel to take instructions from the defendant. Thereafter defence counsel Mr Behanzin requested that the charge be read over to the defendant and he pleaded ‘*Not Guilty to murder but Guilty to manslaughter*’. The court then enquired of the defendant whether he understood that by pleading Guilty to manslaughter he was admitting to causing the death of the deceased by unlawful harm but that he did not intend to kill. He responded “Yes.” **He was asked whether he understood that** by pleading guilty he could be sentenced to a term of imprisonment by this court and he **responded “yes”**. **He was then asked whether he is pleading guilty in order to get** a reduced term of imprisonment although that he was not guilty of the offence. **He answered “No”**.

[20] In his plea in mitigation on behalf of the defendant Learned Counsel Mr Behanzin asked the court to show leniency in exercising its discretion in passing sentence. He highlighted the mitigating factors and referred to the positive attributes of the defendant as indicated in the social enquiry report and made **mention of the defendant's childhood without his biological parents, the fact that** he was able to complete secondary school and attain five (5) CXC subjects, and the skills he had acquired in tiling, painting, plumbing and plastering. He indicated the aggravating factor to be the age of the deceased who was 73 years at the time of his death.

[21] Mr Behanzin urged the court to follow the precedent in cases of manslaughter in this jurisdiction which establishes a benchmark of fifteen years after conviction and a starting point of 10 – 9 years for those pleading guilty. He also asked the court to deduct the 1/3 discount for the guilty plea, and a further discount for the delay as the defendant has been remanded in custody since 3rd December 2013 awaiting trial. He referred the court to the case of *Celine v State of Mauritius*¹ in which the Privy Council held that the delay in a criminal trial constituted a breach of Constitutional rights to a fair trial within a reasonable time and resulted in a reduction in the sentence.

[22] Counsel for the prosecution Ms Sherma Dalrymple relied on written submissions filed in which she highlighted the mitigating factors namely the guilty plea and the fact that the defendant cooperated with the police. She indicated the aggravating factors as i) the age of the deceased. ii) the previous convictions; iii) the lack of remorse shown by the prisoner, iv) the manner in which the offence was committed; and v) the defendant was related to the deceased. She also urged the court to use the benchmark of fifteen years established in cases for manslaughter in this jurisdiction.

¹ [2012] UKPC 32

[23] On the issue of delay Ms Dalrymple submitted that the State was not responsible for the delay in this case as this was a retrial of the matter and as intimated by the Mr Behanzin in his submissions part of the delay was due to the defendant changing his attorney and interference by his mother.

The Sentence

[24] In passing sentence I am enjoined by the classical principles of sentencing laid down in the case of *R V Sargeant* and applied by Byron C.J in *Desmond Baptiste et al*². I will therefore take into account the following factors namely: the seriousness of the offence and the prevalence of that particular offence in society; the character and antecedents of the offender; the mitigating and aggravating factors and the peculiar circumstances of this case.

[25] The court must not only embark on a balancing exercise, by weighing the aggravating factors against the mitigating factors but must also bear in mind the classical principles of sentencing, retribution, prevention, deterrence and rehabilitation. In the instant case I find all four principles are applicable.

[26] There is also an obligation by the sentencing judge to use a range of sentence which is proportionate to the seriousness of the offence and comparable to other sentences imposed for similar offences.

[27] The modern approach to sentencing was highlighted in the case of *Aguillera et al v The State*³ which referred to a starting point as defined by the Court of Appeal of New Zealand in the case of *R v Taukai Ridley and Roberts*⁴ as:

² SVG Crim App. No. 8 of 2008

³ **TNT Crim App. Nos. 5,6,7,8 of 2005'** p. 13

⁴ [2005] NZLR 372

'The sentence appropriate when aggravating and mitigating circumstances relating to the offending are taken into account, but excluding the aggravating and mitigating factors personal to the offender. Put another way the starting point "is the sentence considered appropriate for the particular offence for an adult offender after a defended trial". (R v Mako NZLR 170)

[28] In Aguillera the court emphasized the need to distinguish between aggravating and mitigating factors relative to the offence and the offender and adopted the following methodology.

- i. **'calculate the starting point by taking account of the aggravating and mitigating factors of the offence.** These are the objective circumstances which relate to the gravity of the offence itself which assist in gauging its seriousness;
- ii. the aggravating and mitigating factors relative to the offender – these are the subjective circumstances of the offender which in turn inform the degree of culpability of the particular offender;
- iii. a discount for a guilty plea;
- iv. credit for the period of time spent in pre-trial custody'.

[29] The offence of manslaughter is one of the most serious offences second only to murder and treason. It is the type of offence that leads to the irreversible consequence of loss of life. It is trite law that provocation reduces murder to manslaughter. I am of the view that the degree of provocation in this case was very low. Counsel Ms Dalrymple referred the court to the learning espoused by Ellis J. in *The Queen v Alberto Rosa de La Rosa*⁵ where she stated, at paras 57 and 58 and which I adopt:

'Although manslaughter is a lesser offence than murder it is nevertheless an extremely serious offence which will generally attract a custodial sentence. Although manslaughter presents the greatest variety of circumstances affecting culpability, a key element in assessing the gravity of the objective circumstances of such cases is that they involve the

⁵ Crim. Case No.22 of 2014

unlawful taking of a human life. The starting point must therefore be the fact that **the defendant's actions resulted in death of the victim.**

In arriving at an appropriate sentence, a court must therefore assess the **gravity of the offending**'.

At para 37 of the judgement in R v Donald Rogers⁶ Hariprashad-Charles J made the following observation:

"In weighing the gravity of the offence, regard must be had to the "degree of harm to the victim....the level of culpability of the offenderand the level of risk by the offender to society".

[30] Based on the evidence in this case and what was highlighted in the social enquiry report as well as the submissions by counsel I will begin with a starting point of fifteen years. I consider the aggravating factors relative to the offence to be i) The seriousness of the offence; ii) The use of a weapon namely a knife which the defendant concealed after the attack upon the deceased; iii) The defendant inflicted several stab wounds upon the deceased with a knife, two to the left side of the neck and two to the back; iv) The deceased was unarmed and was 73 years old at the time of the incident and could be considered vulnerable. Accordingly I will increase the sentence by four years bringing it to nineteen years. I do not find there are any mitigating factors relative to the offence.

[31] Next I will consider the aggravating factors relative to the offender. The offender has a criminal record and although there are no laws in Dominica regarding spent conviction I find most of the convictions are more than 10 years old and are unrelated. However there is a conviction in 2010 for malicious damage. This offence for which the defendant is before this court was committed in 2013 that is three years after his conviction and incarceration for malicious damage. I will therefore take account of this in assessing the behaviour and character of the defendant to indicate that he has a propensity for aggressive or violent conduct. Another aggravating factor is the lack of remorse shown by the defendant. This was indicated in the social enquiry report and although defence counsel

⁶ BVI Case No. 24 of 2009

questions this finding he did not furnish the court with any evidence to the contrary nor did I observe any remorse shown by the defendant during the proceedings in this case. Therefore the sentence is increased by two years making it 21 years. The mitigating factors relative to the defendant are the positive traits indicated by members of his family. Also the fact that despite being left to fend for himself at the early age of thirteen the defendant was able to complete his education and attain five CXC subjects. He was also able to enter a marital union and have children. He has also acquired some useful skills. Accordingly this will reduce his sentence by two years bringing it back to 19 years.

[32] Next I will give a discount for the guilty plea. It is established law that an early guilty plea i.e. when made at the earliest opportunity will entitle the defendant to a one third discount which would have reduced the sentence by 6 years and 9 months in this case. However because the plea was not made at the earliest opportunity the defendant will be given a discount of 3 years and 6 months thereby bringing the sentence to fifteen years and six months with time spent on remand to be deducted.

[33] Daniel Elton Bannis you have pleaded guilty to manslaughter. Your sentence would have been 19 years. However since you have pleaded guilty and because you did not do so at the earliest opportunity I have reduced the sentence by three years and six months making it 15 years and 6 months. You have brought pain and anguish to the relatives in particular the daughter of the deceased. You have shown no remorse. Throughout these proceedings I have not seen any indication that you are sorry for what you did. It is time for you to undergo some serious reflection and soul searching on your actions and decide how you want to live your life when you leave Stockfarm prison.

[34] While in prison you should take any opportunity which arises to put your skills of tiling, painting and plumbing and plastering to use so that you will not forget

what you have learned. You should also receive counseling so that you may acquire a greater appreciation and respect for the life of others and their property and develop a better value system to enable you to become a productive and responsible member of society.

.....

Victoria Charles-Clarke

High Court Judge

By The Court

Registrar