EASTERN CARIBBAEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCR2018/0026

DIRECTOR OF PUBLIC PROSECUTIONS

V

SOUVIN RITCHEN

Appearances:

Mr. Vaughn Woodley Crown Counsel for the Crown.
Mr. Jason Hamilton and Ms. Zoie Hamilton for the Defendant.

2019: February, 28

JUDGMENT ON SENTENCE

[1] The prisoner was indicted for murder. His trial commenced on 14th November, 2018 and concluded on 21 November, 2018 when the jury returned a verdict of guilty. The Court ordered a Social Inquiry Report and adjourned the matter to 25th January, 2019 for sentencing.

[2] That report was filed on 23rd January, 2019. Counsel for the Crown and Defence jointly sought an adjournment to facilitate the filing of written submissions on sentence. The Court acceded to the application and adjourned the matter to 28 February, 2019 for sentence.

[3] The Court has carefully considered the contents of the Social Inquiry Report, the written and oral submissions and authorities filed by counsel and a victim impact statement submitted by the

mother of the deceased in which she relates the daily anguish she suffers as she seeks to come to terms with her son's death.

[4] This is my judgment on sentence.

Summary of the prosecution's case

[5] The evidence which the jury must have accepted may be summarized shortly. On 25th August, 2015, the deceased sent a friend of his named Jonathan to run an errand for him. It appears that while seeking to fulfill the request the prisoner's brother confronted Jonathan and sought to obstruct his passage. At some stage the deceased became aware of this and became engaged in an argument with the prisoner's brother. Shortly after, the prisoner emerged from his house and started to walk towards the deceased. The deceased, who was on a bicycle, jumped off his bicycle, threw it down and attempted to run. The prisoner fired about four gunshots at the deceased. The deceased fell to the ground and began crawling and crying for help. The prisoner approached him again and shot him in his head. The prisoner and his brother then strolled casually up Durant Avenue towards his home which was a few feet away. On arrival there, he went to his verandah where he stood looking down on the body of the deceased. Emergency medical personnel responded and conveyed the deceased to the JNF Hospital where he succumbed to his injuries. According to Forensic Pathologist, Dr. Valery Alexandrov, death was due to multiple gunshot injuries.

[6] The prisoner was 26 years old at the time of the commission of the offence.

[7] In the Federation of St. Christopher and Nevis, the penalty on conviction for murder is prescribed by Section 2 of the Offences Against the Person Act Chapter (CAP 4.21) which provides:

> *"Upon every conviction for murder, the court shall pronounce sentence of death and the same may be carried into execution..."*

[8] It is settled, however, that the imposition of the death sentence is not mandatory. The court retains the discretion to impose a sentence other than death.

[9] In The Queen v Rudy Monelle[1], the court, in commenting on the range of sentences possible within the band of judicial discretion for murder observed:

> *"The Court has a discretion in sentencing a defendant; the sentence the court imposes should reflect the seriousness of the offence. A sentencer has a wide range of sentences from which to select for the offence of murder. Indeed, a perusal of the cases from our jurisdiction reflects that our Court has imposed various sentences for the offence of murder, depending on the totality of the circumstances. Life imprisonment for murder is by no means the norm or the starting sentence. The appropriate sentence is determined based on the particular facts. There are many cases in which our Court has imposed a determinate sentence for the offence of murder."*

[10] Accordingly, it is incumbent on the court to conduct a careful assessment of the circumstances relating to the commission of this offence as well as the personal circumstances of the prisoner. The factors that I must consider in determining the appropriate sentence in this case are the nature and gravity of the offence, the design and manner of the execution of the offence, the subjective factors that may have influenced the prisoner's conduct, his degree of culpability and any mitigating factors.

[11] The first task is to identify an appropriate starting point. I do so by assessing the seriousness of the offence. I adopt the dicta of Barrow JA in Kent Calderon & Derek Desir v R citing Clinton Gilbert v R which I consider instructive:

> *"In some jurisdictions that have established different categories of murder, the use of a firearm to kill places a homicide in the category of capital murder. While that is not the law in St. Lucia such a law demonstrates that the use of a firearm to commit murder may reasonably be viewed in our Caribbean common law jurisprudence as a worst-case instance of murder…"*

[12] *Mutatis mutandis*, these observations are apposite in the domestic milieu of St. Kitts & Nevis where the statistics provided by the Local Intelligence office indicate that in 2105 when this offence was committed, there were 9 homicides, all of which were committed with a firearm. As at today's date, there have been eight homicides, all of which have been committed with firearms. The scourge of

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[1] Criminal Appeal No. 15 of 2007.

gun violence is rampant in the Federation. I therefore consider that the fact that a firearm was used to commit the offence warrants the degree of seriousness to be rated as exceptionally high.

[13] In conjunction with the use of a firearm, I am of the view that the following factors adequately justify the classification of the degree of seriousness as exceptionally high: the manner of execution was in the nature of a cold and calculated assassination, committed brazenly without the use of disguise and in plain view of a number of residents; the senseless motivation for the shooting which was an argument between the deceased and the prisoner's brother; and the contemptuous disregard for human life displayed by the prisoner who callously retired to overlook his vicious handiwork perched atop his verandah. It appears to me that the prisoner's conduct that day may reasonably be construed as a proclamation of untouchability in the community. I therefore consider that the appropriate starting point is a whole life sentence.

[14] I next consider whether there are any aggravating factors relating to the offence or offender not already factored when setting the starting point. There are none.

[15] I next consider whether there are any mitigating factors pertaining to the offence or the offender. As it relates to the offence, there are none. As it relates to the prisoner, however, he has no previous convictions and is still relatively young. As a general principle, good character is a mitigating factor which would usually purchase some credit. However, the Court of Appeal in Desmond Baptiste v The Queen[2] recognized that the age and clean record of a defendant carry less weight the more serious the offence. The Court stated:

> "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 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, a case3 of armed robbery, Lord Lane, CJ stated that:
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> > "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".

[16] There is dicta to the same effect in Harry Wilson v The Queen[3] where Saunders, JA stated:

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[2] Cr. App. No. 8 of 2003
[3] Cr. App. No. 30 of 2004

> *"In summary, the sentencing judge is required to consider fully two fundamental factors. On the one hand, the judge must consider the facts and circumstances that surround the commission of the offence. On the other hand, the judge must consider the character and record of the convicted person. The judge may accord greater importance to the circumstances which relate to the commission of the offence. However, the relative importance of these two factors may vary according to the overall circumstances of each case."*

[17] This principle is consistently applied in Caribbean jurisprudence. In Aguillera v The State[4], the Court of Appeal of Trinidad and Tobago recognized that there may be circumstances where the combination of aggravating factors makes the offence so abhorrent that the good character of the defendant is insufficient to merit a reduction in sentence. Weekes, JA Stated:

> *"The sentencing Judge does not look at one factor in isolation and out of context but rather has to evaluate the entirety of the circumstances of the offence and the offender." (at para.30)*

[18] The case at bar is such a case. The prisoner's previously clean record is eclipsed by the abhorrent circumstances of this case so that it is of negligible value and does not occasion any adjustment of the sentence.

[19] The relative youth and the prisoner's prospects of rehabilitation have been invoked by counsel and fall to be assessed as the Court seeks to pay due regard to the rehabilitative aim of sentencing. However, this calls for an assessment of whether there are real prospects of rehabilitation and the unlikelihood of re-offending.

[20] Learned counsel Mr. Hamilton submits that the prisoner's past industriousness and family orientation are indicative of a person not beyond redemption. There is some merit to this.

[21] I have anxiously scoured the Social Inquiry Report for any indicator of such prospects. Typically, this may be gleaned from the fact that while incarcerated the prisoner has engaged in rehabilitative programmes or activities within the prison; embarked on academic or technical vocational studies or has expressed some aspiration or vision for future endeavours which he hopes to embark upon. The report is conspicuous for its silence in relation to any such activities or sentiments by the

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[4] Cr. App. Nos 5,6,7 & 8 of 2015.

prisoner. Given his current attitude, the court is not encouraged to view his prospects of rehabilitation with much cheer.

[22] In arriving at the appropriate sentence in this case I have had at the forefront of my mind the cardinal aims of sentencing: punishment, deterrence; prevention and rehabilitation. I have also had regard to other regional cases; a practice endorsed by Rawlins J.A. in Nardis Maynard v The Queen[5]:

> *"Sentencing in murder cases is at the discretion of the judge, who may impose such sentence as the circumstances of the crime and the aggravating and mitigating factors demand. Judges usually try to be consistent and are entitled to consider similar cases."*

[23] With this objective in mind I have had regard to a number of cases within the jurisdiction of the Eastern Caribbean Supreme Court in which prisoners have been sentenced for murder in circumstances that bear some resemblance to the case at bar.

[24] In Java Lawrence v DPP[6] the appellant shot the deceased behind his left ear while he was on the dance floor. The appellant was 24 at the time of his conviction with convictions for larceny and cottage breaking. His sentence of life imprisonment was upheld on appeal.

[25] In Alpha Duporte v The DPP[7] there was an altercation involving several young men armed with stones and other implements. The deceased, who was not involved in the melee, was walking towards the appellant when the appellant drew a firearm from his waist and shot the deceased five times about the body, including the face. The appellant then pursued and shot another person, injuring him in the leg. Though he had a clean record, his sentence of 25 years imprisonment was upheld on appeal.

[26] In Travis Duporte v DPP[8] the appellant visited the home of the deceased and called him to the gate and engaged him in a conversation. As the deceased turned and was making his way back to his house the appellant shot him in the back. He was sentenced to death. On appeal that sentence was quashed and a sentence of life imprisonment substituted.

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[55] No.12 of 2004, Saint Christopher and Nevis
[6] Cr. App. No 1 of 2005
[7] SKBHCRAP2013/11
[8] SKBHCRAP2006/017

[27] Souvin Ritchen, I have arrived at an appropriate sentence in this case by assessing the seriousness of the offence having regard to the aggravating and mitigating factors relating to the offence. I then considered whether there were any aggravating or mitigating factors relating to you personally. Having regard to the facts and matters discussed earlier in this judgment, the sentence of the court is that you serve a sentence of life imprisonment.

[28] The Court expresses its gratitude to learned counsel for the prosecution and learned counsel for the defence for their helpful submissions.

Trevor M. Ward, QC
Resident Judge

By the Court

Registrar