

SAINT LUCIA

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

Case Nos. SLUCRD 2014/0016A, 0848

THE QUEEN

Claimant

v.

NICHOLAS JEAN
SHANE ST. LUCE

Defendants

Appearances : Stephen Brette for the Crown
David Moyston for the Defendant Nicholas Jean
Alfred Alcide for the Defendant Shane St Luce

2019: March 5

JUDGMENT ON SENTENCING

[1] BELLE J: The prosecution has set out the background of the matter for sentencing in Case No SLUCRD2014/0016A. 0848 The Queen v 1. Nicholas Jean and 2. Shane St. Luce. The Defendants were indicted on an indictment alleging the commission of the offence of murder in the following terms:

That both defendants , between Monday, 16th December , 2013 about 8: p.m and Tuesday 17th December about 7: a.m. at Roseau situate in the Quarter of Anse La Raye, within the First Judicial District of this State, intending to cause Grievous Bodily injury, did commit capital murder by causing the death of Philson Joseph. Contrary to section 85 (b) and 86 (1) (d) (i) of the Criminal Code of Saint Lucia, 2008.

[2] The learned DPP further stated that on Tuesday 10th October, 2017, moments before the commencement of their trial, the defendants through counsel requested

that the indictment be read over to both of them. This was done after a jury was empanelled to try these defendants. The defendants thereafter were arraigned. Both defendants pleaded not guilty to capital murder but guilty to non-capital murder. This plea was accepted by the Crown. They are now before the court for sentencing.

- [3] Since there was never a trial in this case the facts are as gleaned from sufficiency hearing documents and other statements of the Crown and the Defence counsel and Pre- sentence Reports (PSRs)

The Facts

- [4] On Monday 16th December 2013, the two defendants went to the home of the deceased Philson Joseph to steal a gun and money. Based on a statement made by Nicholas Jean to a prosecution witness, he was present when in the course of the robbery, **Shane St Luce took the deceased's cutlass and struck the deceased with it and sliced the deceased's throat with the cutlass causing his death.**
- [5] Based on the evidence, it is clear that the robbery was planned even if the actual killing of the deceased was not. But the evidence also is that Philson Joseph was targeted because he owned a gun and the two defendants wanted to steal the gun to commit a second robbery of a marijuana farm.
- [6] Both defendants were subsequently arrested by the police. They have both made statements identifying the other as the main culprit in the killing. It is not possible for this court to determine who to believe based on the opposing descriptions of what happened at the scene. The salient facts would therefore have to be agreed between Counsel or the facts would have to be determined in a Newton hearing. However, in this case, there was no Newton hearing.
- [7] A Newton Hearing is a procedure where a judge sitting alone hears conflicting evidence to determine which evidence to accept and which to reject. This is only

done when the prosecution's version is not accepted and the parties find it impossible to make a compromise on the facts of the case.

- [8] In the circumstances, the court has to treat the defendants as equally responsible for the death of the deceased.
- [9] Indeed, according to the Pre- sentence Report, Shane St Luce did not deny the robbery plot but disclosed that at the time of the execution of the robbery he **stayed outside of Philson Joseph's house while Nicholas Jean entered the house.** St Luce claimed that from his vantage point, he noticed Nicholas holding on to Mr. Joseph and a struggle ensued. The Defendant revealed that Mr. Joseph was in **possession of a cutlass which "cut " Nicholas in the process. He said that Nicholas pushed Mr. Philson and began "chopping" him about the head while he (Philson) was on the ground. According to the Defendant, he called on Nicholas to "stop chopping the man" but he continued.**
- [10] According to this report, the defendant St Luce indicated that he left Nicholas on the scene and fled in the direction of the house of Timothy who was earlier mentioned during a discussion with Nicholas Jean. The Defendant said he revealed the concatenation of events to Timothy who promised to inform the police. The Defendant St Luce stated that the following day the police arrested him at Morne Ciseaux and subsequently charged him for the offence of murder.
- [11] Based on the account given by Mr Constantine the Probation Officer, Nicholas **Jean's account is the direct opposite of Shane St Luce's, making St Luce the instigator of the robbery and the "chopper" on the day of the murder.**
- [12] Based on the Pre- sentence Report (PSR), there is nothing in the family background of Nicholas Jean which can be seen as a mitigating factor or in some way demonstrating that an act of violence would be out of character. Indeed, the record shows that Nicholas Jean has four previous convictions involving (1)

possession of a deadly weapon (2 charges) and (2) for possession of a firearm and ammunition (2 charges) but these were not in themselves violent crimes. Nevertheless, their possession invites Law enforcement to suspect that the firearms may be put to use.

[13] There is more by the way of some kind of mitigation in the case of the second defendant, Shane St. Luce, who had no previous convictions and indeed even though he was not gainfully employed it shocked members of his community that he was involved in such an incident.

[14] Apart from the Pre-sentence Report, the court is also required to refer to a Psychiatric report for the purposes of sentencing.

[15] I note that a Psychiatrist has reported that there were no psychotic features found on examination of either defendant even though one of them displayed such psychotic features in the past.

[16] I am to follow the principles of sentencing in sections 1096, 1097 and 1098 of the Criminal Code of Saint Lucia and the common law guidelines . It is clear that in a case of murder, the sentence should reflect the odium of the community for this kind of offence and the expectation that the offender would be sentenced in a way which represents just retribution for the offence committed. Again this applies equally to both defendants.

[17] A sentence of this court should also reflect the need to both deter and prevent the repetition of this kind of crime.

[18] **It is noted that in the Crown's submissions show a clear difference of approach in the way the First and Second defendants are viewed.**

[19] Not much hope then is given for rehabilitation of the First Defendant, Nicholas Jean, while the second Defendant, Shane St Luce is seen as a person who could

benefit from rehabilitation partly because of his age and the fact that he had no previous convictions of any kind.

[20] The question is, is this sufficient to cause the court to impose a lighter sentence on Mr St Luce?

[21] I am to take into consideration the characteristics of the offence. This was a very brutal murder committed for amoral reasons which could only end in damage being done to the interest of many other individuals and the community in general.

I will balance the aggravating against the mitigating circumstances. The aggravating factors are listed against both defendants as follows:

The Crown argues that the aggravating factors include:

1. The offence is most serious in nature resulting in the loss of human life
2. The attack on the deceased was unprovoked and executed at a time when the deceased was in the comfort of his home.
3. There is no show of remorse on the part of the First Defendant Nicholas Jean (this is not supported by the Pre-sentence Report).
4. The severity of the attack and the degree of force used in the execution of the offence was most egregious.
5. The prevalence of the offence of murder.

[22] The mitigating factors are listed by the Crown as follows:

Both defendants have pleaded guilty though untimely, thus obviating the need for a trial.

The second Defendant, Shane St Luce, has no previous convictions.

[23] On the behalf of Mr St Luce, counsel argues that the aggravating factors of the offence are:

- (1) The seriousness of the offence.
- (2) Prevalence of the offence

(3) The gruesome nature of the killing.

[24] Counsel for Mr St Luce argues that the mitigating factors are:

(1) **The Defendant's age at the time of the commission of the offence.**

(2) **The Defendant's reasonably early guilty plea, thereby averting the need for a trial** which would inevitably waste precious judicial time and expense.

(3) He has expressed profound remorse for the loss of life a circumstance he never intended or envisaged.

(4) He cooperated with the police.

(5) No previous convictions,

(6) The glowing attributes given to the Defendant by the members of his community in the Pre-sentence Report (PSR)

[25] I am inclined to accept those aggravating factors which both sides hold in common; in addition the Crown added the fact that the First Defendant, Nicholas Jean, showed no remorse and the killing was unprovoked. This is not fully supported by the Pre-sentence Report (PSR). Defence counsel considered the killing gruesome and the Crown was of the view that considerable force was used in the commission of the crime of murder.

[26] Is there a basis for distinguishing the acts of one defendant from the other? The answer is no!

[27] What we have is a gruesome murder in the words of one Defence Counsel, the **victim's relatives and friends left to grieve and the society in awe at the wanton and thoughtless acts of violence prevailing** which often end with the destruction of human life.

[28] There is nothing to suggest whom the main instigator was in this offence and who **carried out the "chopping" of the deceased since both parties accuse the other of the "chopping."**

[29] I therefore have to conclude that both parties were full participants in the crime and neither one withdrew in a manner which made any difference to the result of the criminal conduct.

[30] Indeed on the facts known, this was a crime committed in pursuance of securing the tools to commit yet another crime and by so doing increase the general atmosphere of criminality in the criminal drug related culture of this country.

Victim Impact

[31] The Pre-Sentence Report prepared by the Probation Department states as follows:

During an interview with the Writer, Ms Jennifer Joseph, the daughter of the deceased explained that she had a close relationship with her father who was a tower of support to her. She said he devoted time to spend with his family despite his busy schedule in relation to farming. According to Ms Joseph, the deceased would invariably avail himself to deal with any challenging situation confronting his family. She described him as a warm and friendly individual who was also fond of his grandchildren. Ms Joseph indicated that his grandchildren looked forward to spending quality time with him. She said that she continued to grieve and stressed **that it is difficult to come to terms with her father's death.**

[32] Ms. Joanna Joseph, the daughter of the deceased, stated that the death of her father devastated her, particularly as it relates to the circumstances. She described him as a family man who always initiated some family activity for the enhancement of unity and open discussion, pertinent to family matters. Ms. Joseph indicated that her father was ever willing to render assistance to any family member who made such request. She reiterated his profound interest in the positive development of his grandchildren. Ms. Joseph says that her father continues to be a subject of discussion among family members and stressed that he will be greatly missed.

[33] The offence of murder must be met with a sentence which addresses retribution and deterrence since the impact of the crime is usually very grave at the individual and broader societal level. While the circumstances may tend to show reason to be lenient in some cases because of possible provocation or sudden loss of control that is not the situation in this matter.

[34] In this case both men accuse the other of committing the crime and according to the Pre-sentence Report (PSR) they both express remorse. In my view it is impossible to distinguish the role of one from the other and they have not assisted law enforcement in a way that would show conclusively how the murder took place.

[35] However the court must also consider possible rehabilitation of the defendants, in that regard more must be done than to send these young men to prison for a long period of time.

[36] It is true that St Luce was quite young at the time of the murder but Jean was only two years older. The main mitigating factors for both are youthfulness and the fact that they pleaded guilty and expressed remorse for the offence. Defence Counsel Mr. Moyston has stated that 30 years is a bench mark in terms of a custodial sentence for murder. The court accepts this Benchmark. Of course a sentence of life imprisonment is also available. But in this case I will not impose the maximum sentence on either defendant.

Sentence

[37] In the circumstances, I believe that both defendants should be sentenced to twenty five (25) years at the Bordelais Correctional Facility and they both should be credited with time served on remand if any.

[38] It is hoped that as far as rehabilitation is concerned, that the Defendants, as inmates at the Correctional Institution, will make an effort to demonstrate that they would like to be productive law abiding residents and or citizens of Saint Lucia and would even be willing to make amends or in some way try to heal the damage they **have done to the deceased's family and loved ones** and to the broader St Lucia society.

It is therefore ordered as follows:

(1) For this gruesome murder and the wanton and thoughtless act of violence which is all too common in this Saint Lucian society, often ending with the destruction of an invaluable human life, as it has in this case, a substantial custodial sentence is warranted.

(2) In the premises:

The Defendant Nicholas Jean is committed to imprisonment for a period of 25 years at The Bordelais Correctional Facility for the murder of Philson Joseph.

The Defendant Shane St Luce is committed to imprisonment for a period of 25 years at the Bordelais Correctional Facility for the murder of Philson Joseph.

(3) Both are to be credited with time served on remand.

FRANCIS H.V. BELLE
HIGH COURT JUDGE

BY THE COURT

REGISTRAR