

THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
(ANGUILLA CIRCUIT)  
(CRIMINAL)  
A.D. 2019

AXAHCR 2018/0026

BETWEEN:

REGINA

v

AIKEEM LIONEL ROGERS

Appearances:

Mr. Thomas Astaphan, Q.C. with him Ms. Erica Edwards Senior Crown Counsel,  
Attorney General's **Chambers** of Counsel for the Crown

Mr. D. Michael Bourne, with him Ms. Yanique Stewart of Counsel for the  
Defendant

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2019: April 1;  
June 18.

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Murder – Manslaughter – Assault with intent to commit an offence – Principles of sentencing – Approach to sentencing – Life imprisonment – Determinate or indeterminate life sentence – Proportionality – Approach to sentencing – Longer than commensurate sentence – Previous offending - Eligibility for parole – Parole Act - Time spent on remand – Use of firearm in the commission of offences – Pre-Sentence Report – Rehabilitation – Risk of reoffending – Concurrent or consecutive sentences – Totality principle – Victim impact statement – UK Sentencing Guidelines – Dangerousness – Section 47 Criminal Procedure Act R.S.A. C 150 – Section 142 Criminal Justice Act 2003 (UK) – Schedule 1 Criminal Justice Act 2003 (UK) – Whether applicable to Anguilla – Section 37 (2) Criminal Code R.S.A. C140 – Section 12 Parole of Prisoners Act R.S.A. C P3

JUDGMENT ON SENTENCING

[1] Innocent, J. (Ag.): Mr. Aikeem **Lionel Rogers (the 'Defendant')** was arraigned on a multiple count indictment charging the following offences, namely: on Count 1, murder contrary to section 187 (1) of the Criminal Code, R.S.A. c. C140 (the

**'Criminal Code')** in relation to the death of Anneury Derrick; on Count 2, murder contrary to section 187 (1) of the Criminal Code in relation to the death of Aswad Isaias Delonis; on Count 3 manslaughter contrary to section 192 (1) of the Criminal Code in relation to the death of Aswad Isaias Delonis; on count 5 attempted murder contrary to section 191 of the Criminal Code in relation to Michael Mussington; count 6, assault causing actual bodily harm contrary to section 223 of the Criminal Code in relation to Griffith Gumbs; count 7, assault with intent to commit an offence contrary to section 225 (a) of the Criminal Code in relation to Griffith Gumbs; count 8, assault causing actual bodily harm contrary to section 223 of the Criminal Code in relation to Michael Mussington; count 9, assault with intent to commit an offence contrary to section 225 (a) of the Criminal Code in relation to Michael Mussington. In relation to counts 5, 6, 7, 8 and 9 he was charged as an accomplice; the offences being stated as having been committed along with Aswad Isaias Delonis. Prior to the commencement of the trial the prosecution withdrew count 4 on the indictment.

- [2] The Defendant entered pleas of not guilty to all of the above-mentioned counts. At the conclusion of his trial the jury returned verdicts of guilty in respect of the following counts; namely, counts 1, 3, 7, and 9 on the Indictment.

#### Factual Matrix

- [3] The facts surrounding the commission of the subject offences, and accepted by the jury are briefly summarized below.
- [4] The defendant and another man, Mr. Aswad Isaias Delonis (now deceased), on the night of 17<sup>th</sup> December 2012 entered the Blue Diamond Bar owned by Mr. Anneury Derrick and located in the Farrington on the island of Anguilla. Both the defendant and his accomplice wore masks and had handguns in their possession. Upon entering the bar, one of the men shouted nobody move and they started firing.

- [5] Mr. Michael Mussington, who was at the time one of the patrons at the bar, was shot in the volley of gunfire that ensued. Another patron, Mr. Griffith Gumbs, was also shot.
- [6] The defendant approached the owner of the bar and shot him in the head at point blank range.
- [7] In the course of the ensuing gunfire Mr. Aswad Delonis, the **defendant's** accomplice, appeared to have been shot. The defendant pulled and dragged his accomplice out of the bar into a bushy area located behind the bar leaving behind an extensive blood trail that lead from the bar into the bushy area where the **defendant's accomplice was later discovered dead.**
- [8] Both Mr. Derrick and Mr. Delonis were declared dead at the scene. The pathologist, Dr. Stephen King, described the injuries that both men sustained and **their respective cause of death. Mr. Derrick's cause of death was as a result of** brain damage from a single gunshot wound to the head. Mr. Delonis's **death was** attributed to hemorrhagic shock (bleeding to death) secondary to gunshot wounds that he had sustained that severed his femoral artery and vein.
- [9] The defendant was subsequently arrested and charged by the police for the subject offences on 31<sup>st</sup> December 2012.
- [10] At the allocutus stage of the proceedings the court ordered that a Pre-Sentence **Report (the 'PSR') be prepared and also directed that** counsel prepare written submissions on sentencing. At the sentencing hearing the court heard submissions from both counsel.

#### Approach to sentencing

- [11] In sentencing this defendant, the court will adopt the same approach to sentencing with respect to each offence. In passing sentencing the court adopted the following approach to sentencing. First, the court arrived at a suitable benchmark or starting point having regard to the seriousness of the offence. After arriving at a

suitable benchmark the court will fix the notional term by scaling the benchmark upwards or downwards having regard to the aggravating and mitigating factors present in the case. The court will also have regard to the permissible aims of punishment; and determine whether if any of the permissible aims of punishment needs to be fulfilled by the punishment imposed on the offender. After arriving at the notional sentence the court will then consider whether any term of imprisonment longer than commensurate with the notional term ought to be imposed for the purpose of protecting society from serious harm from the offender. The court will also determine whether any deduction is required from the notional sentence.

### Seriousness

- [12] In sentencing offenders, the court must always apply the principle that the punishment imposed must be commensurate with the seriousness of the offence. In assessing seriousness, **the court must pay regard to the defendant's degree of criminal culpability in the commission of the offence and the degree of harm involved in the commission of the offence.**

### Count 1 – Murder

#### The benchmark

- [13] The statutory penalty on conviction for the offence of murder is life imprisonment<sup>1</sup>. Offences of this nature indubitably require a custodial sentence. The difficulty in sentencing for this offence arises within the context of proportionality. Simply put, the sentence imposed must be commensurate with the seriousness of the offence having **regard to the defendant's degree of criminal culpability in the commission of the offence and the degree of harm occasioned by the commission of the offence.**
- [14] In arriving at a benchmark the court is cognizant of the fact that it is empowered to impose any lesser sentence than that prescribed by law. This leads to the issue of

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<sup>1</sup> Section 189 Criminal Code R.S.A. C 140

whether, having regard to the circumstances of the present case, the sentence imposed ought to be a determinate one (that is a sentence which is mandatorily imposed by statute in comparison to a discretionary life sentence which is one that involves the imposition of term of years).

#### Determinate or indeterminate life sentence

- [15] The principle of proportionality when applied to sentencing dictates that punishment must be commensurate with the seriousness of the offence. It also requires that the sentencing court balances the personal and individual circumstances of the offender, the nature and gravity of the offence, the character and antecedents of the convicted person, those factors that might have influenced the offender in the commission of the offence, the design and execution of the offence and the likelihood of reform and social re-adaptation and reintegration of the offender. The weight to be accorded each of these factors may vary according to the overall circumstances of each case<sup>2</sup>.
- [16] The imposition of a mandatory term of life imprisonment, that is, an indeterminate term, has the tendency to result in disproportionality and constitutional impropriety. Therefore, the court retains the discretion to sentence to any lesser term than that prescribed by statute.
- [17] In *Abraham Harrigan v The Attorney General of Anguilla*<sup>3</sup>, Small-Davis J (Ag.) held that the mandatory imposition of life imprisonment was unconstitutional. This is now a settled point. The courts around the region have recognized the disproportionality and constitutional implications related to the imposition of mandatory life sentences. This is not to say that an indeterminate term of life imprisonment as opposed to a term of years is not permissible in some instances. This may be because of the serious nature of the offence, the fact that the

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<sup>2</sup> *Mervyn Moise v The Queen* Criminal Appeal No. 8 of 2003; cited in *The Queen v Dave Samuels* SLUCRD2009/1101

<sup>3</sup> AXAHCV2009/0052

offender is incapable of reform or that the offender presents a serious risk of harm to the public if released after a determinate sentence<sup>4</sup>.

[18] Mr. Bourne has urged the court to apply the provisions of the Criminal Justice Act (UK) **(the 'CJA')**, the same he says, is applicable to Anguilla by virtue of section 47 of the Criminal Procedure Act R.S.A. c. C150 **(the 'CPA')**. **He says that the provisions of the CPA provides for the reception of the practice and procedure of the Superior Courts of criminal law in England in all matters of procedure not expressly provided for and regulated in the CPA or any other Act. I will not consider the reception of UK law point here.**

[19] However, I find the provisions of the CJA to be of some persuasive guidance to the court in determining the length of the term of imprisonment. Mr. Bourne argues that based on the guidelines made under the CJA, the offence of murder in this instance would fall within the category set out in section 5 (2) and section 5 (2) (1) **(a) of the Schedule to the CJA. If I were to adopt Mr. Bourne's reasoning, then it** would be appropriate for the court, in this instance, to consider that the seriousness of the offence and the combination of the offence and one or more offences associated with it, is particularly high; and the offender was over the age of 18 years when he committed the offence. In these circumstances, the starting point in determining the minimum term is 30 years imprisonment.

[20] Counsel for the defendant quite rightly contends that the starting point of 30 years imprisonment established by the CJA for this category of offence only serves as a guideline, and that the court ought to also have regard to sentences handed down in the domestic and regional courts.

[21] I adopt the reasoning of the Court of Appeal in the case of *Kenneth Samuel v The Queen* where Barrow JA delivering the judgment of the court said<sup>5</sup>:

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<sup>4</sup> *R v Rudy Monelle* [2008] ECSC 88

<sup>5</sup> *Criminal Appeal No. 7 of 2005* at paragraph [20]

**“The reference to a benchmark underscores the point that the starting point in imposing a sentence is not necessarily or even usually the maximum penalty. As a matter of reasoning the maximum penalty must be appropriate only for the worst cases.”**

[22] I accept Barrow JA’s exposition of principle as being an appropriate elucidation of prevailing jurisprudential wisdom, particularly in light of the number of cases that have been remitted to courts of first instance for resentencing in cases where the mandatory term of life imprisonment had been imposed.

[23] Therefore, I will not impose the mandatory indeterminate term of life imprisonment on this defendant. However, I am tasked with determining the length of the custodial term.

Seriousness of the offence

[24] It is beyond dispute that the defendant by his conduct committed a rather grave and egregious offence which connotes a high degree of criminal culpability and resulted in a serious degree of harm.

Culpability

[25] I have sought to measure the **defendant’s degree of criminal culpability** having regard to the following indicators. The circumstances of the present case are indicative of a high degree of criminal culpability. The manner, execution and design of the offence denotes a substantial degree of planning and preparation. The defendant along with his accomplice wore gloves and masks to avoid their identities being detected. The firearms were never recovered, a fact which is indicative of an attempt to conceal the identity of the perpetrator and the crime.

[26] These despicable acts occurred at a business establishment which was being patronized by several unsuspecting and defenseless patrons. This, to my mind, substantially increased the risk and likelihood of physical harm to innocent persons.

[27] **The defendant's unprovoked and unlawful acts resulted in the death of two** persons and varying degrees of personal harm to another two. Notwithstanding the personal injuries sustained by the persons present, one can only imagine the magnitude of the fear and apprehension of harm experienced by the patrons. I am also mindful of the fact that the offences were committed at night and the defendant had taken the precaution of turning off the lights in the establishment.

[28] The degree of culpability is exacerbated by the fact that these offences were committed by a defendant who had previous convictions for offences involving the use of firearms including discharging a firearm in a public place.

#### Harm

[29] I have assessed the degree of harm based on victim impact statements and the **need to register society's abhorrence for this type of offence.**

#### UK Sentencing Guidelines

[30] The UK Sentencing Guidelines provide immeasurable guidance to the court in determining the range of sentences for various categories of offences. However, slavish adherence to them is to be avoided. Although they serve as a useful comparative tool they are predicated on a statutory and jurisprudential framework alien to the jurisdiction in which the court operates. As I have said, the aim in sentencing is to arrive at consistency in approach and not consistency in the sentences passed in respective cases. The facts and circumstances peculiar to each individual case and the personal and subjective factors peculiar to each defendant ought to be the guiding factors in determining the appropriate sentence. It is on this principle that the court should strive to achieve the overriding objective of proportionality in each case.

#### Regional cases



[31] As a cautionary note I would echo the sentiments of Baptiste JA in the case of Roger Naitram and Ors v The Queen<sup>6</sup> that:

“**sentencing** guidelines should not be applied mechanistically because a mechanistic approach can result in sentences which are unjust. Having taken the sentencing guidelines into account, the sentencing court is enjoined to look at the circumstances of the individual case, particularly the aggravating and mitigating factors that may be present and impose the sentence that is appropriate. It follows therefore that a sentencing judge can depart from the guidelines if adherence would result in an unjust sentence ...”

[32] When applying guidelines and referring to sentences handed down in previously decided cases the court ought to strive for consistency in approach and not consistency in terms of the length of sentences handed down. Each individual case turns on its own facts and must be decided with the principle of proportionality in mind.

[33] Both Counsel have cited several cases to me emanating from Anguilla and other countries in the region. I have not referred to them in this judgment.

[34] Having considered the local and regional authorities it appears to me that the offence of murder typically carries a sentencing range of life imprisonment with a minimum term of 22 years imprisonment and a fixed term of 25 - 30 years imprisonment.

[35] Therefore, for the reasons alluded to, I would adopt a benchmark of 30 years imprisonment in the present case.

The notional sentence

[36] Having regard to the seriousness of the offence of murder for which the defendant stands convicted I would fix the notional term at 35 **years’ imprisonment** having considered the aggravating and mitigating factors, the character and antecedents

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<sup>6</sup> HCRAP 2006/005 (Antigua & Barbuda) December 15, 2010

of the defendant, and any other subjective factors that might have influenced the defendant in the commission of the offence. I have also taken into account the permissible aims of punishment.

#### Aggravating factors

- [37] The defendant has previous convictions for gun related offences.
- [39] I have also noted in considering the length of the custodial sentence what the **writer of the PSR has described as the defendant's lack of remorse and contrition** for the commission of the subject offences. The writer reports that the defendant is adamant about his innocence in the whole affair. According to the PSR he exhibits hardly any remorse and this is reflected in what he is reported to have told the writer of the PSR during her interview with him.
- [40] In assessing the character and antecedents of the defendant I have discerned that he possesses a leaning towards deviant conduct. I am fortified in this view by the **matters contained in the PSR and the report submitted by Her Majesty's Prison ('HMP').**
- [41] Unfortunately, there are no mitigating factors capable of discernment in the present case. **Also, the defendant's personal circumstances as set out in the PSR** can afford him little, if any, mitigation at all.
- [42] I am of the view that the aggravating factors in the present case far outweigh the mitigating factors. Therefore, any sentence imposed would fall closer to the higher end of the scale of sentences for the subject offences.

#### Count 3 – Manslaughter

##### The benchmark

- [43] The statutory penalty on conviction for manslaughter is life imprisonment<sup>7</sup>. It has already been established that the court has a discretionary power to impose

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<sup>7</sup> Section 192 (2) Criminal Code R.S.A. C150

punishment lesser than that imposed by law and, additionally, any such sentence must be commensurate with the seriousness of the offence. The same sentencing principles and considerations will apply here as in the case of murder dealt with earlier on in this sentencing judgment.

- [44] One of the bases upon which **the prosecution's case was left for the consideration** of the jury was that the defendant, at the time of the commission of the offence, did not possess the requisite intent to kill. This was what was accepted by the jury when they arrived at their verdict. Clearly, the jury accepted the alternative basis upon which the case was left for their consideration. That is, that the defendant caused the death of his accomplice in the ensuing gunfire. It is on this basis that **the court must assess the defendant's** criminal culpability in the commission of the offence.

#### Seriousness – culpability

- [45] In relation to the conviction for the offence of manslaughter, the court is tasked **with having to assess the defendant's degree of criminal culpability in accordance with the jury's findings of fact implicit in their verdict.** The statutory penalty on conviction for manslaughter is life imprisonment. I find the **defendant's degree of** criminal culpability in the commission of this offence to be moderate. I am of this view based on the factual basis upon which the case was left for the consideration of the jury.

#### Seriousness – harm

- [46] The commission of this offence resulted in a high degree of harm. The deceased bled out significantly before his death as a result of two (2) gunshot wounds. This was a young man whose life was brought to a tragic and premature end.
- [47] **The sentence must reflect society's abhorrence** for the commission of these kinds of offences. The court must send a strong message that gun violence will not be tolerated. Increasingly, courts in the region have recognized that gun related

offences must be taken seriously and ought to be dealt with stiff penalties, especially when resulting in death.

[48] Therefore, I will adopt a benchmark of 15 years imprisonment.

The notional sentence

[49] Having weighed the aggravating and mitigating factors present in the instant case, I have scaled the benchmark downward to take account of the single mitigating factor which is the factual basis upon which the prosecution relied to secure his conviction. In any event, the aggravating factors far outweigh the mitigating factors.

[50] **I have also taken into the account the defendant's personal circumstances and the** subjective factors that might have influenced him in the commission of the offence. I have also considered the permissible aims of punishment.

[51] I would therefore adopt a notional sentence of 12 years imprisonment. I am of the view that this is the appropriate sentence in all the circumstances of the case.

#### Counts 7 and 9 – Assault with Intent

The benchmark

[52] The offence of assault with intent to commit an offence is punishable by 4 years imprisonment<sup>8</sup>.

Seriousness – Culpability & Harm

[53] **The defendant's actions resulted in serious personal injury to Michael Mussington.** One could only imagine the fear and likely apprehension of death that Mr. Mussington experienced given the circumstances in which his injury was inflicted. Mr. Mussington was an innocent patron at the establishment. He had no quarrel or conflict with the defendant. This was a case of unjustified violence with the use of a firearm. Therefore, I regard the offence as one that implies a high

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<sup>8</sup> Section 225 Criminal Code R.S.A. C150

degree of criminal culpability and connotes a high degree of harm. Although the injury to Mr. Gumbs was lesser in degree, I am of the view that the same considerations would apply with respect to the degree of harm and culpability.

The notional sentence

[54] I am of the view that the aggravating factors in the commission of these two offences are exceptionally egregious, and I can find no mitigating factors to lessen this glaring specter of a high degree of aggravation.

[55] Therefore, having assessed the aggravating and mitigating factors in the case, which I have already identified in this judgment, alongside the permissible aims of punishment, I will adopt a notional sentence of 4 years imprisonment. I see no reason to apply any discretion to impose any other term than the maximum statutory penalty for this offence. These were indeed grave offences and I am of the considered opinion that this penalty is commensurate with the seriousness of the crime.

Subjective factors

[56] The court must also consider the **defendant's** personal circumstances and the subjective factors that might have influenced him in the commission of the offences. In assessing this aspect of the case the court has had recourse to the matters contained in the PSR.

[57] The defendant is the only child born out of the marital union between his parents. **The defendant's father is deceased. He died under tragic circumstances when the defendant was 15 years old. The PSR suggest that the defendant's deviant behavior commenced after his father's death. The effect on the defendant resulting from his father's untimely demise was reflected in his diminished** interest in pursuing academic studies. He exhibited signs of withdrawal and reservation from his immediate social environment. He completed high school without attaining any academic achievement. He was not permitted to graduate because of his disruptive behavior at school. He associated with bad company and was

disrespectful to his mother. It became apparent that the defendant was keen on pursuing and engaging in a deviant lifestyle.

[58] This defendant has no professional or vocational skills. Therefore, the prospect of his engagement in meaningful employment is entirely hopeless. At the time of his arrest he was unemployed. Certainly he cannot be described as a productive member of society. His antecedent conduct exemplifies disinclination towards a wholesome and self-sustaining life. These personal characteristics, in my mind, creates the likely risk of the defendant engaging in deviant behaviour as a means of sustenance in the future unless curbed by means of a rehabilitative process.

[59] I have also noted that the PSR suggest that, **among other things, the defendant's** behaviour while incarcerated awaiting trial has been consistent with and emblematic of his life prior to his arrest. He has consistently violated prison rules and regulations. He has been involved in violent behavior involving fights. He has repeatedly been engaged in the smuggling of contraband. This finding is consistent with what is contained in the HMP report.

#### Risk assessment

[60] **The writer of the PSR concludes that given the defendant's lack of remorse** coupled with his unwillingness to accept any responsibility in the commission of the offence, taken in conjunction with his previous offending involving the use of firearms, he presents a high risk of reoffending.

[61] The report from the principal of the Albona Lake-Hodge Comprehensive School **presents a similar bleak picture of the defendant's character.**

#### More than commensurate sentence

[62] Having taken into account the **likelihood of the risk of the defendant's reoffending** and whether there is a substantial risk of harm to the public from this offender, I have had to consider whether a term more than commensurate with the notional term ought to be imposed to reflect these matters. Clearly, this was an offence

involving unquestionably wanton and unwarranted violence involving the use of firearms. Therefore, I think the circumstances surrounding the commission of these offences, coupled with the likelihood of the risk of the defendant reoffending and posing a danger to the public, warrants a more than commensurate sentence for the purpose of protecting the public from the risk of harm from this defendant. Therefore, I have scaled the benchmark sentence of 30 years imprisonment upwards to 35 years imprisonment.

#### Permissible aims of punishment

- [63] In determining the appropriate sentence, the court considered and applied the principles of the permissible aims of punishment. Any sentence imposed must accord with these time honored principles.
- [64] **Punishment as a permissible aim is necessary to reflect society's abhorrence and condemnation** for the commission of the offence. The court cannot and ought not to close a blind eye at the increasing spate of senseless killings, personal injury, grief and suffering resulting from the wanton, selfish, unwarranted, illegal and unrestrained use of firearms in the commission of similar offences not only in Anguilla but throughout the region.
- [65] **In the court's experience**, a substantial if not most of these types of offences are committed by relatively young offenders in the course of the commission of other criminal offences and as part of gang related activity. When sentencing offenders for these type of offences, the court must impose a sentence that clearly reflects **the citizenry's desire to remain safe and protected from unprovoked and senseless violent acts involving the use of firearms that endanger human life and limb.**
- [66] There is a clear and present need for the rehabilitation of this offender. I am fortified in this view by what has been reported in the PSR and the HMP report. Therefore, any sentence imposed must reflect this meaningful aim of punishment. This will have to be achieved within the confines of the prison environment.

[67] It is not certain to what extent the punishment imposed on this offender will act as a general deterrent to would be offenders. However, a strong message must be sent out to prospective offenders that the use of firearms in the commission of violent offences or any offence for that matter will be visited with stiff penalties and sentences.

[68] Therefore, any sentence imposed by the court must reflect the permissible aims of punishment. In the circumstances, the notional sentence imposed by the court will be reflective of all of these concerns.

#### Totality

[69] In passing sentence I have taken into account the principle of totality. Having applied this principle I am of the considered view that the overall sentence passed on this defendant will reflect the totality of his offending.

#### Concurrent or consecutive sentences

[70] The offences formed part of the same transaction or series of events closely connected in time and place. Therefore, I will order that the sentence for each offence shall run concurrently.

#### Deductions

[71] Having arrived at the notional term that I find appropriate I now turn to consider what, if any, discounts from the notional term that the defendant may be entitled to.

#### Time Spent on Remand

[72] The defendant has spent a period of 6 years and 5 months on remand. The defendant will be credited for all time spent on remand.



## Delay

- [73] I have noted that there has been some delay in bringing this offender to trial. This delay is not attributable to any fault on the part of the defendant. Therefore, I will deduct a period of 2 years from each sentence to take account of this fact.

## Parole

- [74] Counsel appearing for the defendant has urged the court to apply the provisions of section 12 (1) of the Parole of Prisoners Act R.S.A. c. P3 (**the 'Parole Act'**) in relation to this offender. The section provides:

"12. (1) When sentencing a prisoner to a term of imprisonment for life, the Court may specify the period of imprisonment the prisoner must serve before he can make an application for parole, the period being such as the Court considers appropriate to satisfy requirements of retribution and deterrence."

- [75] Mr. Bourne relies on this provision to justify the imposition of a term of 15 years imprisonment on the defendant. Section 12 (2) of the Parole Act provides:

"(2) The Governor shall, if the Board so recommends, order the release on licence of a prisoner sentenced to a term of imprisonment for life—

- (a) after the prisoner has served the period of imprisonment specified by the Court under subsection (1); or
- (b) where no period of imprisonment has been specified by the Court under subsection (1), after the prisoner has served not less than 15 years of his sentence."

- [76] I do not agree with counsel for the defendant that the statutory provisions can be interpreted in this way so that the result is that the court can impose a minimum term of 15 years imprisonment. Although the statutory provision speaks to a minimum period of imprisonment before a prisoner can be considered for parole, it does not mandate that the period should be 15 years. The court retains the

discretion to fix the term of imprisonment that the prisoner must serve before being considered for parole.

[77] In addition, the statutory provision applies where a prisoner has been sentenced to life imprisonment. It seems to me that the court can apply its discretion even if it imposes a determinate life sentence or a term of years. Therefore, having considered the permissible aims of deterrence and retribution, and having recognized the need for rehabilitation of this offender, I would fix the period at 22 years after which the defendant may be considered for parole.

Order

[78] **The court's sentence is as follows:**

1. The defendant is sentenced to 33 years imprisonment for the offence of murder.
2. The defendant shall not be eligible for parole before he has served a period of 22 years imprisonment.
3. The defendant is sentenced to a term of 10 years imprisonment for the offence of manslaughter.
4. The defendant is sentenced to a term of 2 years imprisonment for each offence of assault with intent to commit an offence.
5. The respective sentences are to run concurrently.
6. The defendant shall be credited for all the time spent on remand.

Shawn Innocent  
High Court Judge (Ag.)

By the Court

Registrar