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

Claim No. AXAHCR 2018/0009

REGINA

v

DIAYAN AUSTIN
CLIVE HODGE

Appearances:
Mr. Thomas Astaphan Q.C., with him Miss Erica Edwards, Senior Crown Counsel, Attorney General's Chambers for the Crown
Mr. Patrick Thompson of Counsel for Diayan Austin
Mr. Horace Fraser of Counsel for Mr. Clive Hodge

2019: July 22; 29;
October 2.

Murder – Section 188 and 189 Criminal Code, R.S.A. c. C140 – Manslaughter – Sections 192 (1) and 192 (2) Criminal Code, R.S.A. c. C140 – Sentencing – Accomplices – Approach to sentencing – Aggravating and mitigating factors – Previous convictions in another jurisdiction – Whether sentencing court ought to take previous convictions in another jurisdiction into account in determining sentence – Post offending conduct – conduct while imprisoned as an inmate – whether sentencing court can take breaches of the Prison Regulations by an inmate while on remand into account in assessing the offender's character and in determining sentence – Presentence Report – Risk assessment – Dangerousness - Whether likelihood of the prisoner reoffending – Whether longer than commensurate sentence necessary for the protection of the public from harm from the offender – Guilty plea – Whether guilty plea entered at the earliest opportunity – Offender's cooperation with police authorities – Time spent on remand – Calculation of deduction for time spent on remand – Pre-trial delay – whether pre-trial delay warranting deduction from notional sentence

JUDGMENT ON SENTENCING

[1] **INNOCENT J. (Ag.)**: This was a most brutal murder. The perpetrators were no strangers to savage brutality. The deceased who was a visitor to Anguilla was gunned down execution style at his common law wife's sister's home.

Introduction

[2] The defendants, Diayan Austin ('Mr. Austin') and Clive Hodge ('Mr. Hodge') were jointly charged in the same indictment (the 'Indictment') with the following offences: on count 1 on the Indictment they were charged with the offence of murder contrary to section 188 (1) and section 190 of the Criminal Code R.S.A. c. C140 (the 'Criminal Code') for having on 15th December 2014 at South Hill in the Island of Anguilla, with malice aforethought caused the death of Kenya Mitchum (Mr. Mitchum) by an unlawful act; on count 2 and 3 on the Indictment they were charged with the offence of possession of a firearm without having a Firearm's User's License contrary to section 20 (1) (b) of the Firearms Act, R.S.A. F30 (the 'Firearms Act,); and with respect to count 4 on the Indictment with the offence of possession of ammunition contrary to section 20 (1) (b) of the Firearms Act. These were all related offences.

[3] Mr. Austin and Mr. Hodge were arraigned; and, on their arraignment they each entered pleas of not guilty to the several counts on the Indictment.

[4] After the jury had been empaneled and duly sworn, and both defendants given into their charge, Mr. Austin indicated his intention to enter a plea of guilty to the offence of manslaughter in respect of the count of murder. Whereupon he was again arraigned and pleaded not guilty to murder but guilty to manslaughter. This plea was accepted by the Crown. The jury was accordingly directed to return a verdict of not guilty to murder but guilty of manslaughter. The Crown withdrew the remaining counts on the Indictment in relation Mr. Austin.

[5] The trial proceeded with Mr. Hodge as the sole defendant. Mr. Hodge maintained his not guilty plea until the Crown closed its case. At this stage of the trial, Mr. Hodge indicated through his counsel Mr. Fraser, that he was desirous of changing his plea on the count of murder. Mr. Hodge was again arraigned and he entered a plea of guilty to murder. The Crown withdrew the other counts on the Indictment. The jury was directed to return a verdict of guilty to murder.

[6] The sentencing hearing was adjourned to 22nd July 2019. Pre-sentence Reports were ordered and counsel appearing in the matter were directed to furnish the court with written submissions on sentence. On 22nd July 2019 the court heard the oral submissions of both counsel appearing for the Crown, Mr. Austin and Mr. Hodge. The court reserved its decision on sentencing. These are the court's reasons for sentence in respect of Mr. Austin and Mr. Hodge.

Factual matrix

[7] On the morning of 15th December 2014 Mr. Austin and Mr. Hodge went to the house where Mr. Mitchum resided at South Hill in an apartment he shared with his common law wife, her sister and his one-year-old toddler. They hid in the bushes adjacent to the side of the building that housed the apartment. Mr. Austin and Mr. Hodge both wore masks and were in possession of Glock 9mm handguns.

[8] Mr. Mitchum's common law wife left her husband holding their child outside of the apartment and went to hang clothing on the far side of the building where Mr. Austin and Mr. Hodge laid in wait. They emerged out of the bushes and held Mr. Mitchum's common law wife at gunpoint. She pleaded with them to spare her life.

[9] Mr. Austin and Mr. Hodge left and went to the area of the apartment where Mr. Mitchum still stood cradling the child in his arms and proceeded to discharge their weapons at him. Mr. Mitchum ran to the safety of the apartment still holding his child who he placed on the floor of the apartment. Mr. Austin and Mr. Hodge entered the apartment. Several shots were fired at him while he laid on the floor helpless. After committing this violent act in the presence of Mitchum's child Mr. Austin and Mr. Hodge fled the scene.

[10] The sadistic and savage nature of Mr. Austin's and Mr. Hodge's premeditated acts are best exemplified by the nature of the injuries inflicted on Mr. Mitchum. Several witnesses including Dr. Shani Hughes, Dr. Stephen James King (the 'Pathologist'), Mr. John Ridgeway and police officers who witnessed Mr. Mitchum's body at the

scene gave vivid descriptions of the gruesome state in which Mr. Mitchum's body was found. It appears that what remained of Mr. Mitchum represented a sad memorial of man's mortality.

[11] The Pathologist conducted a post mortem examination on Mr. Mitchum and described the injuries that he saw on Mr. Mitchum's body. He described a "slit like" shrapnel wound above the left eyebrow where the fragment of a projectile was discovered.

[12] There was a gunshot entry wound to the front of the neck and, underlying this wound was a track through the neck tissue that went through the trachea then through the first right rib and exited the right upper back.

[13] The Pathologist also described a gunshot wound to the chest that traversed the upper portion of the left lung and the left side of the thoracic vertebrae which damaged the spinal cord and exited the left upper back.

[14] Also seen on Mr. Mitchum's body was a gunshot wound to the left side of the mouth with associated damage to the upper incisor and canine molar, that traversed the left side of the tongue, the right posterior pharynx, the right side of the third cervical vertebrae, that damaged the upper cervical vertebrae and the upper cervical spinal cord before exiting the right base of the neck where a bullet fragment was discovered.

[15] There was a shrapnel entry wound to the left anterior chest. Another entry wound to the left side of the chest that fractured the left fifth rib and traversed the left scapula where a hollow point bullet was recovered.

[16] Another bullet entry wound was seen to the right side of the chest area that traversed the soft tissue of the chest and exited the chest in the nipple line.

[17] A series of superficial shrapnel wounds extending from the right index finger along the right forearm from which bullet fragments were recovered.

[18] There was a bullet entry wound to the left thigh that traversed the upper thigh and exited the left buttock. There was also a shrapnel wound to the right upper thigh.

[19] The Pathologist gave the cause of death as hemorrhagic shock and upper cervical spine damage secondary to multiple gunshot wounds.

[20] The Pathologist also observed that there were multiple shrapnel wounds that appeared to be from varying distances. According to the Pathologist the gunshot wounds appeared to have been inflicted from a distance greater than three feet; and that given the varied nature of the wounds suggested that the wounds were inflicted by the discharge of projectiles from various distances. The Pathologist opined that the gunshot wound that may have been inflicted at the closest distance was the one to the left side of the mouth.

[21] Doctor Shani Hughes ('Dr. Hughes') a medical practitioner pronounced Mr. Mitchum dead at the scene. She observed similar injuries to that described by the Pathologist. Dr. Hughes described Mr. Mitchum's body lying in a pool of blood and spinal fluid.

[22] Mr. Ridgway gave a vivid description of the aftermath of the shooting. Mr. Ridgeway entered the apartment after the shooting to offer any assistance that he could to the victim. He said that when he entered the apartment he saw a young child who appeared to him to be about 10 month's old sitting next to Mr. Mitchum's body. He said the baby was sitting in the crook of Mr. Mitchum's arm when he retrieved the baby. This he said suggested to him that Mr. Mitchum had been holding the baby when he was shot.

[23] Mr. Austin and Mr. Hodge were subsequently arrested at Mr. Austin's apartment at Blowing Point, Anguilla where the firearms used in the commission of the subject offence were recovered along with other items of evidence that connected them to the crime.

[24] After he was charged Mr. Austin gave the police a confession statement in which he sought to implicate himself and Mr. Hodge in Mr. Mitchum's murder. In his confession statement Mr. Austin suggested that Mr. Hodge was the one who played the leading role in the murder. Mr. Austin also testified on behalf of the prosecution in the trial of Mr. Hodge.

[25] The heart of the case against Mr. Austin was premised on the formal written admissions made to the police in his voluntary statement under caution to the police. He gave his account of the circumstances leading up to the shooting and the circumstances of the fatal shooting itself. The substance of his admission tended to implicate Mr. Hodge as the perpetrator who essentially 'finished off' Mr. Mitchum and played a leading role in the commission of the offence.

[26] Prior to passing sentence, the defendant, Mr. Hodge indicated to the court that he wanted to make certain oral representations to the court. Whereupon he proceeded to read from a prepared type written document that he presented to the court. It seemed that his intention was to put forward a different factual version of events from that upon which his guilty plea was predicated. He also sought to impress upon the court that he was not guilty of the offence. Mr. Hodge's counsel was absent during the sentencing exercise, however, Mr. Hodge was ably assisted by Ms. Stewart who acted amicus on his behalf. After consulting with Ms. Stewart he withdrew from his previous position.

[27] In my view there was no substantial or any dispute concerning the material facts of the commission of the subject offence. Therefore, there was no need to conduct a 'Newton' hearing. The defendant, Mr. Austin maintained his guilty plea on the

basis of his written admissions to the police; and Mr. Hodge pleaded guilty at the close of the prosecution's case. Therefore, it was not improper to conclude, as I have done in the present case, that Mr. Hodge was the moving force and primary mind behind the commission of the offence. In coming to this conclusion I have adopted the approach of the Trinidad and Tobago Court of Appeal in the case of **Aguillera and Others v The State**[1]. In delivering their decision the Trinidad and Tobago Court of Appeal cited the decision in **Nadia Pooran v The State**[2] where a similar approach was taken in circumstances similar to the present case.

The approach to sentencing

[28] In sentencing Mr. Austin and Mr. Hodge the court will adopt the following approach. The court will first arrive at a benchmark having regard to the seriousness of the offence. The seriousness of the offence will be considered within the context of the defendant's degree of criminal culpability in the commission of the offence and the degree of harm.

[29] Having arrived at a suitable benchmark the court will then scale the benchmark upward or downward having regard to the aggravating and mitigating factors present in the case to arrive at a notional term. The sentencing court should also take into consideration the permissible aims of punishment and whether any additional term of imprisonment in excess of the notional term is required to protect the public from serious harm from the offender. Ultimately, the court should arrive at a notional sentence that reflects society's abhorrence for the offence.

[30] The court will then consider whether if any deductions from the notional term are necessary to take account of such factors as the defendants' guilty pleas, time spent on remand any period of delay in the matter coming to trial or any other factor which the court deems a discount from the notional term is warranted.

[1] Crim. App. Nos. 5, 6, 7, 8 of 2005 (9th June 2016) at paragraphs (9) – (13)

[2] Crim. App. No. 32 of 2005 at paragraph (37)

The defendant Hodge

The benchmark

[31] In fixing the benchmark the court considered that the statutory penalty prescribed for the offence of murder is life imprisonment[3]. The sentence prescribed clearly highlights the seriousness nature of the offence. The court is mindful of the fact that it has a discretion to impose a penalty less than that prescribed by law[4].

[32] Therefore, the court can impose a discretionary life sentence as opposed to a whole life or mandatory life sentence. This discretion is grounded in the principle of proportionality which the court is obliged to apply in each case.

[33] Clearly there are varying degrees of criminal culpability in the commission of the offence of murder; therefore, the court must be mindful when sentencing offenders for this offence of the subjective factors that might have influenced the offender in the commission of the offence and any mitigating factors that may be brought to bear on the exercise of the court's discretion.

[34] Accordingly, the court is not mandated to adopt a benchmark that is equivalent to the statutory maximum penalty for the commission of a subject offence. To do so may likely result in a sentence that is excessive or disproportionate.

[35] Therefore, the court must adopt a benchmark sentence that is commensurate with the seriousness of the offence, the defendant's degree of criminal culpability and the degree of harm caused. The defendant's degree of criminal culpability must be assessed in light of the degree of harm intended. Where the worse harm is intended it follows that the seriousness of the offence would be greater.

[3] Section 189 Criminal Code, R.S.A. c. C140
[4] Section 41 Criminal Code, R.S.A. c. C140

Seriousness – culpability

[36] In assessing Mr. Hodge's degree of criminal culpability in the commission of the offence, the court took into account the fact that the offence was planned and was motivated by the lust for retaliation in what may be considered as falling within the context of gang related activity. This was clearly a reprisal killing.

[37] The court also took into account that the offender deliberately caused more harm than that which was necessary for the commission of the offence. In this case, the manner, execution and design of the offence was tantamount to overkill. It went over and above what was sufficient to achieve the desired and ultimate objective of killing Mr. Mitchum. This is clearly the case in light of the numerous shots discharged at Mr. Mitchum and the number and position of the wounds inflicted on him. Even more revealing is the injury to Mr. Mitchum's mouth which was the suggested coup de grace. To my mind these factors point to a high degree of criminal culpability.

Seriousness – harm

[38] In assessing harm I have considered that the offender had the intention to cause harm and that the risk of harm to others was present at the time of committing the offence. The latter being considered in light of the fact of the gravity of the harm that could have resulted to others.

[39] In assessing the degree of harm I have taken into account the psychological distress occasioned to Mr. Mitchum's common-law wife who was present and witnessed a part of the shooting. Her psychological distress quite obviously must have been exacerbated by the fear of the likelihood of injury or the death of their child. This psychological harm is also manifested by the loss of her common law husband in the most brutal manner. A death that she witnessed. The court is also mindful of the fact that their child also suffered psychological harm. This element of harm is clearly reflected in the victim impact statement submitted to the court.

These factors to my mind connote a high degree of harm. I am fortified in this view by the matters contained in the victim impact statement of the victim's common law wife. I think it necessary to set out portions of this victim impact statement to further illustrate and amplify the court's position.

[40] Mr. Mitchum's common-law wife in her signed victim impact statement presented to the court by the prosecution stated:

> "The actions of the defendants have completely impacted and changed my life. I cannot even begin to describe the feelings of terror and hurt I felt when I witnessed my partner and daughter's father being murdered violently by the defendants. My daughter was in her dad's hands when he received the first shot. ……..My daughter was only one year old. …….. I still have nightmares about witnessing such a brutal and violent act on someone who was so dear to me. ……..I still can recall how scared I was wondering if my daughter would have been shot also.
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> The murder of Kenya has impacted me mentally and financially. Kenya supported us financially. …… I now have to maintain my daughter financially on my own and this has been tough. The toughest part of this is the fact that my daughter has to grow up not knowing her dad ………… She constantly ask to speak to him ……..She is afraid of fireworks. Whenever she hears fireworks she screams. It is heartbreaking for both of us to attend funerals………..
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> My mental health suffered as a result of the murder. …… I had to receive counselling to help me cope with the murder. …….. I am not certain if I will be able to totally heal from such a violent incident that I had to witness while my then 1-year-old daughter who was my only child was in her dad's arms."

[41] In the circumstances, I would fix a benchmark that reflects the seriousness of the offence having regard to the high degree of criminal culpability and harm highlighted in the factors considered by the court.

[42] Therefore, I would adopt a benchmark sentence of 30 years' imprisonment for the offence of murder in this case. Although Counsel appearing for Mr. Hodge had suggested a lower benchmark than the 30 years adopted by the court, I have adopted this as a starting point based on the seriousness of the offence. In arriving at this starting point, I did not think it appropriate to fetter my discretion by adopting starting points adopted in other decided cases involving murder. I do not

think that a sentencing court can fetter its discretion in fixing the starting point in this way. The starting point ought to reflect a sentencing court's view on the seriousness of the offence having regard to the degree of harm and the degree of criminal culpability of the offence in a particular case.

[43] In arriving at this benchmark the court has sought to make a comparative analysis of the benchmark adopted for murder in decided cases which mirror as near as possible the circumstances of the present case within the jurisdiction of the Eastern Caribbean Supreme Court.

[44] In **The Queen v Clinton Gilbert and Anor**[5] the sentencing judge adopted a benchmark of 30 years imprisonment. The defendants, one armed with a shotgun and the other a pistol walked up to the victim while he was sitting in a public area and shot and killed him in the presence of several onlookers. One of the defendants stood over the victim and emptied the pistol on him while aiming for his head. The victim did not die instantly. He managed to get up and run away. It was then that the other defendant chased after him and shot him in the back with a shotgun. When the victim fell to the ground, the defendant was seen banging away at his head. The victim died on the spot. They were each sentenced to a term of life imprisonment.

[45] In delivering his judgment Ramdhani J (Ag.) said:

> "This is really one of the worst of the worst killings in St. Lucia. It was callous and coldblooded and without a doubt these men intended to kill this deceased victim. They effectively tried to obliterate him from the face of the earth having regard to the manner of the commission of the murder. One of them emptied the gun on him. When that did not kill him and he rose to flee, the other would not let him go, but promising to finish him off, chased after him and did just that. I can hardly see how this offence could rise in the range of seriousness."[6]

[5] SLUHCRD 2006/0020 (St. Lucia) delivered 15th October 2015

[6] At paragraph [56]

[46] Ramdhani J. (Ag.) referred to the decision in **The Queen v Kent Calderon and Derek Desir**[7] where Barrow JA. said:

"In some jurisdictions that have established different categories or 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. The judge mentioned the senselessness of this murder and the seeming lack of motive for it. He could, as well, have mentioned that shooting seven or eight times at a completely exposed victim displayed an intention that established murder not because the act was criminally reckless or inferentially intentional but because it manifested an intention to murder, and a desire for that result."

[47] Mr. Fraser, learned counsel appearing for Mr. Hodge in his written submissions urged upon the court that the appropriate starting point in the present case ought to be 20 years' imprisonment. In support of this position he cites the case of **The State v Kenrick Tyson**[8] which he says established that the benchmark for murder ranges from 7 years imprisonment to life imprisonment.

[48] On the authority of **Kenneth Samuel v The Queen**[9], Mr. Fraser submitted that the circumstances of the commission of the present offence does not make it the worst of the worst categories of murder. In support of this contention he cites the dicta of Barrow JA in **Kenneth Samuel**, where at paragraph [20] of the judgment the learned Justice of Appeal said:

"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. However, much of the instant case may have shocked the public it is clear that this case does not fall into the category of the worst cases."

[49] I do not find much strength in Mr. Fraser's argument. Given the factual matrix of the present case and the aggravating factors that the court has alluded to it cannot

[7] Criminal Appeal No. 9 and 10 of 2006
[8] DOMHCR 2011/0024
[9] Criminal Appeal No. 7 of 2005

be said that the instant case does not fall within the category of the worst cases of murder. However, it has always been conceded that the court can depart from the maximum penalty in appropriate cases in the exercise of its discretion.

The notional term

[50] In fixing the notional sentence the court will have regard to the aggravating and mitigating factors present in the case. Having assessed and weighed the aggravating and mitigating factors the court will decide to scale the benchmark upwards or downwards.

[51] In arriving at the notional sentence the court must also strive to arrive at a sentence that is in keeping with the principles of the permissible aims of punishment. Particularly, whether there is the need to increase the notional sentence for the purpose of rehabilitation or to protect the public from the likelihood of harm from the offender. As well the court must be mindful of any other factor that may warrant the imposition of a more than commensurate sentence.

Aggravating factors

[52] In assessing the aggravating factors in the present case, care will be taken to avoid double counting where the same factors were taken into consideration in assessing the degree of culpability and harm.

[53] The court has identified the following aggravating factors in the present case. The offence was committed with the use of an unlicensed firearm. The defendants attempted to conceal the commission of the offence by attempting to secret away evidence tending to implicate him in the commission of the offence. The offence was unprovoked. The defendant, Mr. Hodge has shown little if any remorse in the commission of the offence. Despite having plead guilty he continues to deny his

involvement in the murder[10]. The defendant Mr. Hodge played a leading role in the commission of the offence.

Character and antecedents

[54] The court also considered Mr. Hodge's character and antecedents. Although the prosecution has placed before the court Mr. Hodge's conviction record from St. Kitts, the court did not take this into account. These offences were not committed in Anguilla but rather in a place where this court has no jurisdiction. Therefore, the court will disregard these previous convictions. Both Mr. Astaphan Q.C. and Mr. Fraser were agreed on this point. However, the court agrees only to this limited extent. I am of the considered view that these matters may very well assist the court in assessing Mr. Hodge's character based on his previous offending.

[55] The prosecution also placed before the court a report pertaining to offences against prison discipline committed by the defendant while on remand. Mr. Astaphan Q.C. appearing for the prosecution quite rightly conceded that the court ought not to have regard to this material as it bears no significance as far as the subject offence is concerned. I agree. This aspect of the case has brought to the fore the wisdom in the court viewing matters contained in Presentence Reports with an eye of scrutiny and even sometimes circumspection.

The presentence report

[56] In assessing the defendant's character and antecedents the court had regard to the Presentence Report (the 'PSR') submitted to the court.

[57] Mr. Hodge is 40 years old and was 35 years old at the time of committing the subject offence. He is not married and has one son aged 11 years who resides with his mother in St. Kitts. It does not appear that Mr. Hodge plays any meaningful role in his son's life.

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[10] Paragraphs 8.1 & 10.1 PSR

[58] The PSR revealed that Mr. Hodge admits to being associated with gangs while he resided in St. Kitts and that he was part of a gang. Mr. Hodge revealed to the writer of the PSR that he did not wish to elaborate on that part of his life. It appears from the PSR that Mr. Hodge moved to Anguilla in the year 2006 because of discontent and discord between members of the gang to which he belonged which eventually lead to the breakup of the gang due to the tension between its members[11]. Mr. Hodge's gang related activity was verified by other sources according to the writer of the PSR[12].

[59] Although Mr. Hodge attended secondary school he did not accomplish much by way of certification having failed to graduate. After leaving school he has worked throughout as a labourer in the construction industry[13].

Mitigating factors

[60] To my mind there are no mitigating factors that operate in favour of this defendant. In arriving at this conclusion, I am also guided by the concessions given by counsel appearing for Mr. Hodge in his representations to the court.

[61] Given the factors that I have highlighted above, and having weighed the mitigating and aggravating factors, I have concluded that the benchmark of 30 years' imprisonment requires an uplift. Therefore, I will shift the benchmark of thirty years' imprisonment upwards by 12 years. Therefore, I will adopt a notional term of 42 years' imprisonment. I have considered this substantial uplift from the benchmark adopted for the reason that the likely sentence to be imposed by this court may not be sufficient to compensate for the seriousness of the offence. I have considered this case of murder to be within the category of the 'worst of the worst'.

[11] Paragraph 2.1 PSR
[12] Paragraphs 2.4 & 2.5 PSR
[13] Paragraph 3.1 PSR

Rehabilitation

[62] The PSR alludes to Mr. Hodge presenting a medium to high risk of harm to others and reoffending without intervention[14]. I agree with Mr. Astaphan Q.C. that there is no empirical basis to support the writer's opinion on risk assessment. Therefore, I will disregard the writer's opinion in relation to risk of reoffending or the risk of his causing harm to the public.

[63] However, one of the primary concerns of the court in passing sentence on the defendant is the need for his rehabilitation. It is anticipated that the length of the present custodial sentence will afford the defendant the opportunity to achieve the permissible aim of rehabilitation.

Deduction for guilty plea

[64] This defendant entered his plea of guilty to the subject offence quite late in the proceedings and not at the earliest available opportunity. The question with which the court must grapple is to what extent is he entitled to a discount for his guilty plea. It appears that it is a matter for the exercise of the sentencing court's discretion in the absence of any statutory formula or guidelines in this jurisdiction.

[65] I have adopted the approach to giving credit for a defendant's guilty plea in light of the decision in **Aguillera**. The discount for the guilty plea was based on an evaluation of the full circumstances of the individual case of each of the two defendants. The strength of the prosecution's case was seen as a relevant consideration in the evaluation of the surrounding circumstances. I also took into account the circumstances in which the plea was entered and what it indicated about the acceptance of responsibility for the offending, and that the credit given should legitimately reflect the benefits provided to the criminal justice system and to the participants to it.

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[14] Paragraphs 10.6 & 11.2 PSR

[66] In **Aguillera**[15] the Court of Appeal cited the decision in **Raymond Everest v R**[16] where McGrath J. said[17] at paragraph [74] et seq. of the judgment of the court:

> "[74] But, as we have emphasised, the credit that is given must reflect all the circumstances in which the plea is entered, including whether it is truly to be regarded as an early or late plea and the strength of the prosecution case. Consideration of all the relevant circumstances will identify the extent of the true mitigatory effect of the plea.
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> [75] ……… Whether the accused pleads guilty at the first reasonable opportunity is always relevant. But when that opportunity arose is a matter for particular inquiry rather than formalistic quantification. A plea can reasonably be seen as early when an accused pleads as soon as he or she has had the opportunity to be informed of all implications of the plea.
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> [76] At the other end of the range, there may be cases in which there are significant benefits from a plea, warranting a sentence reduction, even though the plea comes very late. After a trial has commenced some real justification should be required before any allowance is made but there are from time to time instances where an allowance is justified.
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> [77] All these considerations call for evaluation by the sentencing judge who, in the end, must stand back and decide whether the outcome of the process followed is the right sentence."

[67] As I see it, the question of when the defendant's first opportunity to enter a plea of guilty arose is a matter for the sentencing judge[18]. This issue arose in the course of the sentencing hearing in relation to both defendants. I think it necessary to set out the approach which the court has adopted in relation to the timing of the defendants' guilty pleas. This approach must be consistent if justice is to be done between different offenders.

[68] I have given consideration to the fact that unlike jurisdictions like Saint Lucia where there are Criminal Procedure Rules in place, which affords a defendant to

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15 At paragraph (31)
16 [2010] N.Z.S.C. 135
17 Paragraphs [64] – [77]
18 R v David Caley and others [2013] 2 Cr. App. R. (S) 47

either plead guilty or indicate an intention to plead guilty at an early stage in the proceedings there are no such procedures in place in Anguilla[19]. Therefore, it seems to me that the earliest opportunity available to a defendant to indicate his willingness to plead guilty is upon his arraignment at trial.

[69] In the case of Mr. Hodge, he only entered his plea of guilty to the offence of murder after the prosecution had closed its case. This was after over twenty witnesses had been called to testify at the trial and several failed objections to the evidence had been made. This, to my mind resulted in a waste of precious judicial time and expense. It seems to me that Mr. Hodge maintained his innocence throughout the trial for tactical reasons albeit to take advantage of any technicality related to the admissibility of the evidence lead by the prosecution at the trial. However, whereas he was quite entitled and within his rights to do so, I have had to evaluate this aspect of the case relative to the strength of the prosecution's case.

[70] Therefore, the question arises whether Mr. Hodge is entitled to any discount at all; and insofar as the court finds that he is so entitled, what deduction he should be entitled to. It is apparent that where a sentencing judge considers that no discount or a minimal discount is required then he ought to state the reasons for departing from the norm. Again, I have sought guidance from the case of **Aguillera** where the court approached the issue in this way[20]:

> "The usual discount of approximately one-third (1/3) may be properly reduced if it is clear that the plea is motivated by tactical considerations. In this regard, the strength of the prosecution case may, on occasion, be a relevant factor to be evaluated in considering all the circumstances in which the plea is entered. When a judge considers that this might be a relevant factor, he ought to invite counsel on both sides to address him on the issue. When the judge has found that the prosecution case is a strong one so as to justify a reduction in the usual discount of approximately one-third (1/3), he should give brief reasons for so concluding. Such a reduction in the usual discount must be approached with caution and

[19] See: section 59 Magistrates Code of Procedure Act

[20] At paragraph (32)

requires particularly careful justification and an explanation in the reasons which is clearly expressed. In **R v Caley and Others** [2012] EWCA Crim. 2821, Hughes LJ said at para. 24:

> "… the various public benefits which underlie the practice of reducing the sentence for a plea of guilty apply just as much to 'overwhelming'

cases as to less strong ones…judges ought to be wary of concluding that a case is 'overwhelming' when all that is seen is evidence which is not contested…even when the case is very strong indeed, some defendants will elect to force the issue to trial, as indeed is their right. It cannot be assumed that defendants will make rational decisions or ones which are born of any inclination to co-operate with the system, but those who do, merit recognition. When contemplating withholding a reduction for a plea of guilty in a very strong case, it is often helpful to reflect on what might have been the sentences if two identical defendants had faced the same 'overwhelming' case and one had pleaded guilty and the other had not…."

It may on occasion be tempting for sentencers to avoid a reduction in sentence for a plea of guilty when the statutory maximum sentence is low or there is some other inhibiting factor and the resulting sentence is considered to be insufficient. This temptation must be resisted. The sentencer cannot remedy perceived defects or shortcomings by the refusal of the appropriate discount: see **R v Caley** supra per Hughes LJ at para. 25. The cautious and careful approach outlined in para. (iv) above and in this paragraph reflects the need to give significant weight to the distinct and far-reaching public benefits which result from a guilty plea;"

[71] In **Aguillera** the court held in relation to the approach to be applied when a sentencing court determines that no discount ought to be applied on account of a defendant's guilty plea that:

"In law, an admission which is properly proved or which is accepted by the maker without any relevant qualification, has the potential to be the highest in the scale of evidence, since it is a declaration against self-interest: see **Cross and Tapper on Evidence** 10th Ed. at pages 659-663. Circumstantial evidence, once it is of an independent nature (as in this case), derives its potential force from the unlikelihood of coincidence - see **Cross and Tapper on Evidence** 10th Ed. at pages 30 and 31. Circumstantial evidence, when placed alongside an admission, can lend support to aspects of it.

For these reasons, we are of the view that the prosecution case in this matter was of a strong nature. Accordingly, the judge acted well within the parameters of the discretion entrusted to him in concluding that because of the strong prima facie quality of the prosecution evidence, the pleas were (at least in part), tactical in

nature and attracted a reduced discount of twenty-five percent (25%). We can identify no basis upon which to interfere with the exercise of the Judge's discretion."[21]

[72] In the circumstances, and having applied the approach that I have set out above, I am of the view that the case of Mr. Hodge warrants a departure from the usual practice of giving credit to a defendant who has pleaded guilty to an offence on a 'sliding scale' basis. I am of the view that Mr. Hodge is entitled to some discount for his guilty plea. However, any such discount should be minimal. Therefore, having considered the principles involved I will discount a period of one year from the notional sentence to take account of Mr. Hodge's guilty plea.

Deduction for delay

[73] Mr. Fraser appearing for Mr. Hodge has urged this court in his written submissions to credit him for the delay in bringing the matter to trial. In support of this contention he relied on the decision of **Joseph Celine v The State of Mauritius**[22].

Deduction for time spent on remand

[74] Mr. Hodge has been on remand from 15th December 2014. Accordingly, he has spent a period of 4 years, and 6 months on remand awaiting trial. He is therefore entitled to be credited for all time spent on remand in determining the length of his sentence. This period of time spent on remand will be deducted from the sentence of 42 years imprisonment commencing from the date of sentence.

Parole

[75] I have also given consideration to the idea of parole in light of the rehabilitative principles involved in sentencing. S**ection 12 (1)** of the **Parole of Prisoners Act R.S.A. c. P3** (the 'Parole Act') provides:

[21] At paragraph (32)
[22] [2012] UKPC 32

"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."

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 am of the considered view that 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 an indeterminate life sentence or determinate or discretionary life sentence.

[78] 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 25 years after which the defendant Mr. Hodge may be considered for parole.

The defendant Austin

The benchmark

[79] The statutory penalty on conviction for the offence of manslaughter is life imprisonment[23]. Again the court is mindful of the fact that it has the discretion to impose a sentence that is less than that prescribed by law. In assessing Mr. Austin's degree of criminal culpability and the degree of harm caused by the commission of the subject offence, the court will adopt the same approach as in the case of Mr. Hodge.

Seriousness – culpability

[80] Now in the case of Mr. Austin slightly different considerations apply in assessing his degree of criminal culpability. This is so in light of the basis upon which Mr. Austin's plea of guilty to the offence of manslaughter was accepted by the prosecution. For all intents and purposes Mr. Austin may be regarded as the least of the apostles. Mr. Austin has implicated Mr. Hodge as the principal offender. Having accepted the plea to manslaughter the prosecution concedes that the role played by Mr. Austin in the commission of the offence carries a lesser degree of criminal culpability as in the case of Mr. Hodge.

[81] The prosecution in their written submissions have categorized the offence as gross negligence manslaughter. I disagree. This was clearly a case of unlawful act manslaughter. This defendant admitted discharging a firearm twice at Mr. Mitchum notwithstanding that there is evidence that suggest that the gun jammed. He admits to following Mr. Hodge into the apartment. He was present when Mr. Hodge discharged several rounds of ammunition into Mr. Mitchum's body. He assisted Mr. Hodge in attempting to conceal the commission of the offence.

[82] I would regard the commission of the offence of manslaughter by Mr. Austin as carrying a high degree of criminal culpability for the same reasons as in the case of Mr. Hodge.

[23] Section 192 (2) Criminal Code, R.S.A. c. C140

Seriousness – harm

[83] In assessing the degree of harm the court will have regard to the same considerations as in the case of Mr. Hodge. Mr. Austin's participation in the commission of the offence, notwithstanding that he played a lesser role in it, connotes a high degree of harm.

[84] In the circumstances, I will adopt a benchmark of 15 years' imprisonment for the commission of the offence in the case of Mr. Austin.

The notional term

[85] In establishing the notional sentence in Mr. Austin's case, the court will adopt the same approach as in the case of the defendant Mr. Hodge.

Aggravating factors

[86] The following aggravating factors can be distilled from the circumstances surrounding the commission of the offence. The offence was committed with the use of an unlicensed firearm. The defendant attempted to conceal the commission of the offence by attempting to secret away evidence tending to implicate him in the commission of the offence. The offence was unprovoked.

Mitigating factors

[87] The court has identified the following mitigating factors present in the case of Mr. Austin. Mr. Austin has no previous convictions. He played a lesser role in the commission of the offence.

[88] Mr. Thompson, counsel for Mr. Austin cited Mr. Austin's relative youthfulness and lack of maturity at the time of the commission of the offence. He says he was 20 years old at the time. I find great difficulty accepting this as a mitigating factor in the present case in light of the seriousness of this offence and the nature of Mr. Austin's participation in its commission. I am fortified in this view, by the fact that in

most cases of this nature the offender's personal circumstances, for example, pleas of youth and previous good character, pale in significance to the seriousness of the offence; particularly in view of the court's duty to reflect the clear intention of the legislature that offences of this kind should be met with greater severity.

[89] Counsel appearing for Mr. Austin also relied on Mr. Austin's cooperation with police authorities. To rely on this as a mitigating factor would result in double counting since Mr. Austin also seeks a discount from the notional sentence based on this fact. In the circumstances, I would decline to accept that this is a mitigating factor. In any event I am of the view that Mr. Austin cooperated with the police only after he was charged and not during the initial investigation and interview stage.

[90] I adopt this posture also because of Mr. Austin's disavowal that he had made the statements tending to assist the police investigation voluntarily and that he had somehow been coerced into making it. Mr. Astaphan Q.C. quite rightly observed that notwithstanding Mr. Austin's statement to the police after he was charged, which to some extent assisted the prosecution, Mr. Austin continued to disavow his out of court statement to the police in the witness box and had to be deemed a hostile witness.

Character and antecedents

[91] The court was provided with insight into Mr. Austin's character and antecedents by means of the Presentence Report submitted to the court.

[92] Mr. Austin is now 25 years old, he was 20 years old at the time of committing the subject offence. He appeared to have had a challenging childhood that continued into his formative years. He has not benefited from any formal education, he only attended primary school up to the age of 12. He is severely challenged on the employment market and has engaged in odd jobs to maintain himself. He was unemployed at the time of committing the offence.

[93] Reports from Her Majesty's Prison paints Mr. Austin in a favourable and positive light. During his incarceration awaiting trial, he has taken positive steps towards his rehabilitation. He has enrolled in academic classes, and behavioural modification programs.

[94] Mr. Austin has been described by members of the community as being a very quiet and nonviolent person. From all indications Mr. Austin appears to have been a person of previous good character.

[95] In the circumstances, it appears that the aggravating and mitigating factors in the case of Mr. Austin are evenly balanced. Therefore, I will not depart from the benchmark of 15 years' imprisonment by scaling it upwards. Neither will I scale it downwards having regard to the aggravating factors inherent in the case that have caused me to ponder whether the overall sentence would be sufficient to take account of the seriousness of the offending. Accordingly, I would adopt a notional sentence of 15 years' imprisonment.

Deduction for guilty plea

[96] This aspect of the sentencing exercise has presented some challenge to the court. Mr. Thompson appearing for Mr. Austin has argued that Mr. Austin is entitled to the maximum discount of 1/3 of the notional sentence on account of his guilty plea, which he said was tendered by Mr. Austin at the first available opportunity. Mr. Astaphan Q.C. argued to the contrary.

[97] I find that the plea was entered at the first available opportunity. Though late in the proceedings, when the jury had already been empaneled, it was only when Mr. Austin had been advised by counsel and the prosecution had shown its willingness to accept the plea that the plea was entered. In the circumstances, I would deduct a period of 1/3 from the notional sentence.

Deduction for delay

[98] Here the same considerations would apply as in the case of the defendant, Mr. Hodge. Accordingly, a period of 1 year will be deducted from the notional sentence on account of the delay. The delay caused in bringing the matter to trial was not Mr. Austin's fault. Mr. Thompson, in his written submissions, alerted the court to the decision of **Violet Hodge v The Commissioner of Police**[24] where the Court of Appeal of the Eastern Caribbean Supreme Court had to determine the issue of whether delay in the hearing of a matter is a mitigating factor in sentencing. The Court of Appeal held that:

> "In determining the sentence to be imposed, it is necessary to have regard to any failure to proceed with a case with due expedition. Excessive delay can affect the question of the justice of the sentence. Delay in bringing an accused to justice is recognized as a mitigating factor that can be considered in sentencing and its effects can be recognized by a reduction in sentence. …….. The delay between the appellant's initial charge and subsequent conviction and sentence spans a period of five years, for which no fault can be attributed to the appellant. In the circumstances, the court in the exercise of its discretion considers that a one-year reduction for delay would be fair."

[99] I consider this to be a correct exposition of the law and I would apply the same principle here.

Deduction for time spent on remand

[100] Mr. Austin has been on remand from 15th December 2014. Accordingly, he has spent a period of 4 years and 6 months on remand awaiting trial. He is therefore entitled to be credited for all time spent on remand in determining the length of his sentence. This period of time spent on remand will be deducted from the sentence of 15 years' imprisonment, the remainder of the sentence will commence from the date of sentence.

[24] BVIMCRAP2015/0005

Deduction for cooperation with police authorities

[101] The question of whether Mr. Austin was entitled to any deduction on account of his cooperation with the police authorities was a hotly debated topic at the sentencing hearing. Mr. Astaphan, Q.C. registered his disagreement on two main grounds. First, he argued that Mr. Austin's cooperation with the police came at a late stage in the police investigation. Second, he submitted that Mr. Austin, notwithstanding his formal admission to the police withheld his evidence and refused to cooperate with the prosecution when he testified at the trial. I have had to consider Mr. Astaphan's contentions within the context of the trial proceedings. Although Mr. Austin had been deemed a hostile witness he was less than forthcoming in light of the reasons that he gave for his hesitation to testify at the trial. Therefore, I disagree with Mr. Astaphan's submission and I would credit Mr. Austin for his cooperation with the police authorities. A period of 1 year imprisonment will be deducted from the notional sentence to take account of his cooperation with the police.

[102] During the course of the sentencing exercise the reasons for the court's sentence was explained to both defendants as appears from the oral sentencing remarks that appear below in this judgment.

Sentencing Remarks

[103] This is perhaps one of the most difficult duties that I have ever been called upon to perform. The circumstances of this case, the difficult task is that of sentencing. What makes the task infinitely more difficult is that a life was lost. In fact, a life was taken away. A life that was not given by the persons who stole it away. More so, this was a case where the life was taken meticulously, with extreme prejudice and extreme marksmanship. What is even more troubling, there was a child involved. He was holding his child. That child must be a very special child and must have had the most powerful guardian angel in the world.

[104] The evidence was that there was shrapnel all over the house. The shrapnel injured the victim. It defied logic that this child did not die, and none of the perpetrators bore that in mind when they carried out their premeditated and vicious plan.

[105] When people go out to commit these acts, think of all the trouble that it creates. The victim impact statement was read out in court and it was heart wrenching to say the least. Every action, everything that we do in this world has a concomitant effect, everything. We come into this world but we are not given the right to change destiny or to change the course of human life – no, that is not our place, that is not our purpose.

[106] Mr. Hodge, Mr. Austin, the train of events that you have set in motion will carry on from henceforth.

[107] Then, now you create trouble for the courts. Mr. Astaphan has to prosecute you; defence counsel has to come; the state has to bear the costs; you have to empanel jurors. Nobody's life is going to be the same again. Why? For ego? When are we going to learn to just walk away? Have you two gentlemen sat down and thought about the consequences of your actions? Have you had the time for quiet reflection and meditation? You cannot take back what you did. The point is that all of us were born and we were given the power of discernment, we were given a lot of powers as human beings. But the most important power is choice, choice. You could have chosen not to do what you did, but you went ahead and did it anyway. You left Blowing Point or wherever it is that you left; you went to South Hill; you laid wait in the bushes armed with powerful weapons; you held up this woman, she plead with you for her life; that did not stop you. At that point nothing triggered your mind to say look, you know something, this does not make good sense. The man is standing outside the apartment cradling his toddler in his arms and you fire at him anyway. He tried to save his child's life, that is what was uppermost in his mind because that was his humanity; that was his humanity. You lacked humanity. He put the child down, you went into the house after he was shot and you

executed him and left the child lying in his spinal fluid. That was the evidence. How can you erase that? How do you sleep at nights? And Mr. Hodge, what has been put before the court suggest that it was all gang related from St. Kitts and you came here to take out a whole man. That is the inference that I am speaking about. Now, to add to the aggravation the evidence suggest that you are quite skillful with a weapon. You knew where every vital organ was located.

[108] Only someone who is trained, knows how to shoot that way. You held the gun to his mouth. You severed his spinal cord. The evidence is that this is where the gunshot residue was located which meant that you held the gun to his mouth as the final act of degradation, as the final act of hate, rage, uncontrolled passion. His child was in the room. You were here, you heard the victim impact statement. You heard the effects that this child is suffering from presently, up to a day like today she is scarred for life. You cannot erase that. Even if the court were to tell you to spend the rest of your natural life in jail, it cannot erase the harm that you have done.

[109] Today, is the first time that I have departed from the technical nature in which courts typically hand down sentences. We are more human than that. We are not going to serve justice with formulas; it will be creating a very bad jurisprudence. Sentencing must reflect the abhorrence that society has for these kinds of despicable acts.

[110] Today you have said to me that you have not seen your son. What message have you sent to your son? What message have you conveyed to him, that it is manly to pick up a weapon and kill a man? What makes us men is our ability to feel, to be sensitive, to understand other people, to be forgiving, to contemplate, to reflect, to introspect, before we act. Not picking up guns to kill people.

[111] Mr. Mitchum was recovering from surgery. You were at the trial, you heard what the Pathologist said. His liver was damaged. He had a laparotomy. He had a very

large surgical scar which suggest that some surgeon had to open him up and perform a serious surgery on him, so that at the time that you struck him down he was already half a man. And, of course, we can draw the inference that it all stems from St. Kitts; and he comes to Anguilla with a rather large surgical scar, which says that there was some serious surgical intervention to save his life. So, in your case, Mr. Hodge, the court is mindful of the fact that the maximum penalty prescribed by law for the offence of murder is life imprisonment. The Parliament of the United Kingdom in its infinite wisdom outlawed the death penalty. You should be grateful for that.

[112] However, the court has a discretion to impose any lesser penalty than that prescribed by law. Accordingly, I will start with a benchmark of 30 years' imprisonment, then I am required to weigh the aggravating and mitigating factors in deciding whether to adjust the benchmark upward or downward.

[113] In this case, there are absolutely no mitigating factors. I am not going to consider your guilty plea as a mitigating factor. However, it will be that you will achieve some credit for it by way of deduction from the notional sentence that the court will pass.

[114] Now, unfortunately there are no aggravating and mitigating factors for me to weigh. I cannot exhaust the list of aggravating factors present in this case. Therefore, I will scale the benchmark of 30 years upwards to 42 years. You will therefore be entitled to a deduction in terms of your guilty plea which was not at the earliest opportunity. I recognize upon your indictment you were unrepresented by counsel and may not necessarily have been properly instructed in terms of your plea. Nonetheless, it was late in the proceedings. It was at a time when the prosecution was about to close its case, therefore, I will deduct one (1) year imprisonment from the notional term of 42 years.

[115] Mr. Fraser in his submissions has asked the court to take into account the delay in this matter which obviously was through no fault of yours. I have thought long and

hard about this in terms of what discount you ought to get in relation to the delay in the matter. I would give you a discount of one (1) year imprisonment from the notional term of 42 years.

[116] Therefore, your sentence – stand up Mr. Hodge. You are sentenced to 40 years' imprisonment and not to be released before 25 years. You will be credited for all time spent on remand. Your sentence will run from today's date.

[117] Mr. Austin, stand up, please. Apparently you are a follower, and the old adage is show me your friends and I will tell you who you are. Do you understand me?

[118] And you fear for your life? So you recognize and accept how precious life is. But according to you, you followed a man, you accepted and was willing to take the blame. According to your own words, you said to the police "they're both mine". You cooperated eventually. We'll give you credit for that. The indication is that you show some positive steps towards rehabilitating yourself. But curiously enough, while you were free and at large why didn't you take the advantage of the opportunity to better yourself? I just can't understand why it is that when you all get to prison that's when you all want to be educated and do various things. Slavery is over. Why do young black men insist on running afoul of the legal system? When you get incarcerated that's when you realise that life is actually meaningful, that now I must educate myself and empower myself behind bars? But why did it have to take you being locked up, to realise that you need to do that in the first place? What have you gained? You have lost your freedom and gained absolutely nothing.

[119] So I have considered the presentence report which has said some positive things about you. Your lawyer has asked the court to take into account the fact that you cooperated with the police authorities. The court is also mindful of the circumstances that lead to your early guilty plea for which you will be entitled to a discount of one-third (1/3) from the notional sentence that the court will impose.

You made a valiant attempt nonetheless in supporting the prosecution's case which the court will consider as an act of remorse. Therefore, I will adopt a benchmark of 15 years' imprisonment. I have weighed the aggravating and mitigating factors. I am not going to belabor the aggravating factors again; it is just too gut-wrenching for me. And I do not want the general public to have to revisit the savage brutality of the acts that occurred at South Hill on that day. I think this is perhaps one of the most infamous murders that I have ever had to deal with. And quite honestly the trial took a toll on all of us. It took a toll on Mr. Astaphan, it took a toll on your own lawyer, it took a toll on the court. And not just that, it has scarred the conscience of Anguilla. In such a beautiful and pristine country, you have sought to obscure all the beauty of nature and soak it in blood.

[120] I find the aggravating and mitigating factors in your case evenly balanced so I will not scale the benchmark upwards. So therefore, you are entitled to a one-third discount from the 15-year sentence, so that takes it to 10 years. I have taken into account that you have been on remand for 4 years and six months. This period of 4 years and 6 months on remand will be deducted from the notional sentence of 15 years. You get the same discount as Mr. Hodge, in respect of delay which is 1 year from the 10 years which would make it 9, and you will also be entitled to a further discount of one year on account of your cooperation with the police authorities. Therefore, your sentence is 8 years' imprisonment less the deduction for time spent on remand which will commence from today. Do you understand?

Shawn Innocent
High Court Judge

By the Court

Registrar