



[2022] JMSC Crim 3

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CRIMINAL DIVISION**

**CASE NO. 2015HCC0005**

**BETWEEN**

**REGINA**

**CROWN**

**AND**

**MARK HENRY**

**DEFENDANT**

**Ms. Shauna-Kay James Assistant Director Public Prosecution of the Office Director of Public Prosecutions for Crown**

**Mr Donald Gittens and Mrs Rebecca Neal for the Defendant**

**Heard: 5<sup>th</sup> and 14<sup>th</sup> of October 2022**

**L. Shelly-Williams, J**

**Sentence: Triple Murder – Stabbing Deaths – Sections 2 and 3 of the Offences Against the Persons Act**

**Background**

[1] The bodies of Nadine Carridice along with her two children Javuagh Thomas and Rohan Ellis were found on the morning of 29<sup>th</sup> of April 2014 outside of their place of residence. The police were summoned and the scene was processed. The case for the crown was that the defendant had spoken to two persons prior to the incident and informed them that the deceased Nadine Carridice had owed him money. The defendant told one witness two weeks before the 29<sup>th</sup> of April 2014 that if Nadine did not repay the money he was going to kill her.

- [2] On the 28<sup>th</sup> of April 2014 the defendant was seen about 7:30 pm in the Red Berry District, of Manchester, exiting a taxi and heading in the direction of Old Road which leads to Ramble, where the deceased persons resided. The deceased persons were last seen alive around 10 pm on the 28<sup>th</sup> of April 2014.
- [3] On the 29<sup>th</sup> of April 2014, the investigating officer, went to the home of the defendant and saw him with scratches on his hands dressed in dark clothing. The defendant was asked about his clothing and he indicated that he had been wearing the shorts and t-shirt from the day before. The clothing of the defendant was taken from him at the Porus Police Station. The clothing was labelled, sealed and taken to the Government Forensic Laboratory on the 1<sup>st</sup> of May 2014. The blood of the three deceased persons, along with other items taken from the crime scene were sent to the Government Forensic Laboratory. The blood of the defendant was taken with his consent at the Mandeville Hospital and taken to the Government Laboratory. A DNA analysis was conducted on the clothing of the defendant, and the samples taken from the deceased persons. A DNA Summary was produced and admitted into evidence. The DNA Summary detailed that the blood of one of the deceased was found on the shorts taken from the defendant, whilst the mixed sample of two of the deceased was found on the t-shirt taken from the defendant.
- [4] The defendant denied committing these offences. The defendant denied giving any clothing or items to the investigating officer, he however admitted that he handed over his clothes to another police officer. The defendant did not take issue with the DNA summary, he however denied that the shorts and t-shirt admitted into evidence were the ones he had handed over to the police officer. The defendant was convicted for the three counts of murder on the 5<sup>th</sup> day of October 2022.
- [5] In approaching sentencing in this matter, I was guided by Statute, case law and by the Sentencing Guidelines.

## The Statute

### [6] THE OFFENCES AGAINST THE PERSON ACT

Section 3 of the Offences Against the Persons Act gives guidance as to the sentence to be given to defendant that are convicted for the offence of murder. Section 3, 1(C) states that:-

*In the case of a person convicted of murder, the following provisions shall have effect with regard to that person's life eligibility for parole, as if those provisions had been substituted 6(1) to (4) of the Parole Act-*

- a) where a court imposes a sentence of imprisonment for life pursuant to subsection (1)(a), the court shall specify a period, being not less than twenty years, which that person should serve before becoming eligible for parole; or*
- b) where, pursuant to subsection (1)(b), a court imposes –*
  - i. A sentence of imprisonment for life, the court shall specify a period being not less than fifteen years; or*
  - ii. Any other sentence of imprisonment, the court shall specify a period, being not less than ten years,*

*which that person should serve before becoming eligible for parole.*

## Sentencing Guidelines

The Sentencing Guidelines mirrors somewhat the Offences Against the Person Act and as such merely indicates the minimum that the courts should consider in handing down sentence. According to Sections 3(1)(a), Section 2(1)(a) – (f) and Section 3(1A), of the Offences Against the Persons Act, the categories of murder that attract a minimum sentence of 20 years are:-

- a. those committed in furtherance of burglary or housebreaking,
- b. arson in relation to a dwelling house,
- c. robbery or any sexual offence,

- d. multiple murders, whether committed on the same or on a different occasion.

In this case, the defendant was convicted of multiple murders committed at the same time.

### **Case Law**

- [7] In seeking to arrive at the appropriate sentence in this matter I took into consideration a number of cases. The first case I considered was **David Russel v R** [2013] JMCA Crim 42, where the appellant had been convicted for two counts of murder. He was sentenced to thirty years at hard labour on count one, and life imprisonment with him having to serve 40 years before being eligible for parole on count two.
- [8] I was assisted by the Court of Appeal case of **Ian Gordon v R** [2012] JMCA Crim 11. In that case the appellant was found to be one of three men who shot and killed two men in a house. The appellant was originally sentenced to death, however, that sentence was commuted, and the appellant was then sentenced to life imprisonment, not being eligible for parole before 30 years.
- [9] I found the case of **Jeffery Perry v R** [2012] JMCA Crim 17, to be the case that was most on point. In that case the appellant had been convicted of three counts of murder. The deceased, aged four years, thirteen years and fifteen years were stabbed to death by the appellant. McIntosh JA in delivering the Judgement noted that the Court took into consideration a number of mitigating circumstances to include that :-
- (a) The appellant had been diagnosed with OCD.
  - (b) The appellant had no history of criminal or violent behaviour.
  - (c) The appellant had assisted the police in their investigations.
  - (d) There was no evidence of motive.

(e) That he spent seven years in custody since the commission of murder.

[10] This however had to be balanced against the aggravating factors which were :-

(a) The sheer horror of the murders.

(b) That the slaughter of the innocents that posed no threat to him.

(c) The public revulsion of such diabolical actions.

The appellant had been sentenced to death, but his sentence was commuted and the Court of Appeal sentenced him to life imprisonment and for him to serve 45 years before being eligible for parole on each count. The sentence was to run concurrently.

[11] In handing down the sentence in this matter, I will take into consideration the time the Defendant spent in custody. I will abide by the principles detailed in the case of **Charley Junior v R** [2019] JMCC Crim 16. These principles being that:-

- a. there is a primary rule that full credit must ordinarily be given to pre-trial incarceration;
- b. the credit should as far as possible be done by way of an arithmetical deduction;
- c. a sentencing judge has a discretion, in certain circumstances, to depart from the primary rule; and
- d. one of the exceptions that the sentencing judge may apply imprisonment or remand in respect of unconnected offences.

[12] I have recognised the principles laid down in paragraph 11.4 of the Sentencing Guidelines, which state that:-

*“Despite the general rule, the sentencing judge retains a residual discretion to depart from it in exceptional cases, such as, for example:*

- i. where the offender has deliberately contrived to enlarge the amount of time spent on remand;*
- ii. where the offender is or was on remand for some other offence unconnected with the one for which he or she is being sentenced;*
- iii. where the offender was serving a sentence of imprisonment during the whole or part of the period spent on remand; and*
- iv. generally, where the offender has been in custody for more than one offence and cannot therefore expect to be able to take advantage of time spent on remand more than once.”*

### **The Sentence**

[13] In arriving at my sentence I took into consideration the case of **Jeffery Perry v R** [2012] JMCA Crim 17. As indicated previously, the facts of that case were that three persons had been stabbed to death and the defendant was sentenced to life imprisonment with him serving 45 years before becoming eligible for parole. In arriving at an appropriate sentence, the Court of Appeal took into consideration a number of mitigating factors that do not apply in this case. The defendant in this case does not have a mental disorder and did not assist the police in their investigation.

### **Count One**

[14] The aggravating circumstances of this case among other things are:

1. There is a prevalence of this type of crime in society.
2. The deceased was a mother of two children.
3. The deceased was stabbed repeatedly, receiving 4 incise wounds and 3 stab wounds. She died from haemorrhage and shock as well as multiple stab wounds to the neck.
4. The deceased was stabbed and killed outside of her home.

**[15]** Mitigating circumstances :-

1. The Defendant has a good social enquiry report.
2. The Defendant has no previous conviction recorded against him.
3. The time spent in custody.

**[16]** I have taken into consideration the plea in mitigation as well as the aggravating and mitigating circumstances.

**[17]** The sentence of the Defendant would be life sentence. In considering the issue of possibility before parole, I take inconsideration the abovementioned cases. In light of that, my starting point will be 30 years. Due to the aggravating circumstances listed above, I will increase the sentence by 30 years. I will deduct:

1. One year for the good social enquiry report.
2. One year for the fact that he has no previous conviction.
3. The period of time that the defendant has been in custody, which is 8 years and 6 months.

**[18]** The accused is hereby sentenced to life imprisonment, and he is to serve 49 years and 6 months before the possibility of parole.

**Count two**

**[19]** The aggravating circumstances are :-

1. There is prevalence of this type of crime in society
2. The deceased was very young ie. 11 years old.
3. He died from haemorrhage and shock and from one incise wound to the neck.

4. He was killed outside of his home.

**[20]** Mitigating circumstances:-

1. The Defendant has a good social enquiry report.
2. The Defendant has no previous conviction recorded against him.
3. The time spent in custody.

**[21]** My starting point for this count will be 30 years. Due to the aggravating circumstances listed above, I will increase the sentence by 30 years. I will deduct:

1. One year for the good social enquiry report.
2. One year for the fact that he has no previous conviction.
3. The period of time that the defendant has been in custody, which is 8 years and 6 months.

**[22]** The accused is hereby sentenced to life imprisonment, and he is to serve 49 years and 6 months before the possibility of parole.

### **Count three**

**[23]** The aggravating circumstances are :-

1. There is a prevalence of this type of crime in society.
2. The deceased, who was 16 years old, sustained 14 incise wounds and 3 stab wounds. His cause of death was haemorrhage and shock as well as multiple sharp force injuries to the neck.
3. The evidence of the defendant is that this deceased was his biological son.
4. This is a young victim that died outside of his home.

**[24]** Mitigating circumstances:-

1. The Defendant has a good social enquiry report.
2. The Defendant has no previous conviction recorded against him.
3. The time spent in custody.

**[25]** My starting point for this count will be 30 years. Due to the aggravating circumstances listed above, I will increase the sentence by 30 years. I will deduct:

1. One year for the good social enquiry report.
2. One year for the fact that he has no previous conviction.
3. The period of time that the defendant has been in custody, which is eight years and 6 months.

**[26]** The accused is hereby sentenced to life imprisonment, and he is to serve 49 years and 6 months before the possibility of parole.

The sentences are to run concurrently.