



[2020] JMSC Crim 5

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

**IN THE CRIMINAL DIVISION**

**CASE NO. 2015HCC0005**

**BETWEEN**

**REGINA**

**CROWN**

**AND**

**ANTHONY BAILEY**

**DEFENDANT**

**Mrs. Sharon Millwood Moore Deputy Director of the Office of Public Prosecutions  
and Mr. Malike Kellier Crown Counsel of the Office Director of Public Prosecutions  
for Crown**

**Ms. Diane Jobson for Defendant**

**Heard: 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> March and 17<sup>th</sup> July 2020**

**L. Shelly-Williams, J**

**Sentence: Gun related murder**

### **Background**

[1] On the 14<sup>th</sup> of March 2010 in the Rollinton Town area of Kingston, the Defendant ran after Bryan Brown otherwise called Sarge with a gun. The Defendant fired a shot at Sarge in the back and when he fell, the Defendant went over to Sarge, bent towards him with the gun and fired a shot in his forehead. Sarge died as a result of gunshot wounds.

- [2] In approaching sentencing in this matter, I was guided by statute, case law and by the Sentencing Guidelines.

### **The Statute**

- [3] THE OFFENCES AGAINST THE PERSON ACT

(1C) 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**

- [4] The Sentencing Guidelines mirrors somewhat the Offences Against the Person Act and as such merely indicates the minimum that the courts should consider in passing a sentence.

### **Case Law**

- [5] I will be relying on the case of **Techla Simpson v R** [2019] JMCA Crim 37. The facts in **Techla Simpson v R**, are that two men on the 17<sup>th</sup> of November 2004 shot Constable Joshua Black several times, killing him. The deceased was robbed of two firearms one of which was used to shoot him. In that case, the trial judge sentenced the defendant to life imprisonment with 40 years before the possibility

of parole. Brooks J in his decision considered a number of cases including the cases of :-

- a. **Christopher Thomas v R**, [2018] JMCA CRIM 31 where Morrison P, reduced the sentence of the Applicant from 40 to 28.5 years.
- b. **Paul Brown v R** [2019] JMCA Crim 3 where F. Williams JA, reduced the sentence of the Applicant from 45 to 25 years.

In the case of **Techla Simpson**, the Court of the Appeal ruled that the Defendant was to serve 38 years before the possibility of parole.

**[6]** 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.

**[7]** 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**

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

1. This incident took place at 8 pm, a short distance from the police station at Rollington Town.
2. This is a gun related murder and the firearm was never recovered.
3. Prevalence of this type of crime in society

**[9]** Mitigating circumstances:-

1. The Defendant has a good social enquiry report having regard the aspect of his community report.
2. The Defendant has no previous conviction recorded against her.
3. The time spent in custody.

**[10]** I have taken into consideration the plea in mitigation as well as the aggravating and mitigating circumstances. I note that the Defendant has no previous conviction recorded against him.

**[11]** The sentence of the Defendant would be life sentence. In considering the issue of possibility before parole, I take inconsideration the case of **Techla Simpson v R.** Unlike the **Techla Simpson** case, the facts in this case do not include the element

of robbery. In light of that, my starting point will be 25 years. Due to the aggravating circumstances listed above, I will increase the sentence by 10 years. I will deduct:

1. One year for the positive aspects of the 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.

**[12]** The accused is hereby sentenced to life imprisonment, and he is to serve 25 years before the possibility of parole.