



[2021] JMSC Crim 1

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CRIMINAL DIVISION

CLAIM NO. CACT 2019CR00106

BETWEEN

REGINA

CROWN

AND

WADE BLACKWOOD

DEFENDANT

Mrs. Andrea Martin-Swaby Deputy Director of Public Prosecution for the Crown

Mr Steven Powell for the Defendant

Sentence: Plea – Guilty – Murder (2 counts) – Illegal possession of firearm

Heard: 21st of January 19th February and 11th of March 2021

Shelly Williams J

Background

[1] On the 2nd of January 2018 at 3.57 pm, Mrs Simone Collymore was a passenger in a taxi. The driver Mr Winston Walters had taken her from downtown Kingston to the entrance of the Forest Ridge Apartments at 5 Stanley Terrace, Red Hills, St Andrew. On arrival at that apartment, two motor cycles approached the taxi. The two pillion passengers that were on the motor cycles opened fire on the occupants of the taxi. Mrs Simone Collymore received nineteen gunshot wounds whilst Mr Winston Walters received five gunshots wounds. They were taken to the Kingston Public Hospital where they were both pronounced dead. By any account this was a brazen and cruel act.

[2] The incident was captured on closed circuit television (CCTV) and the footage, along with still photographs from the footage, were admitted into evidence. The faces of the two men who committed the murders were clearly visible on that footage with the defendant being identified as one of the assailants. His face could clearly be seen on the footage as well as in the photographs. On the 21st of January 2021 he pleaded guilty to the offences.

[3] In arriving at the sentence to be imposed on the defendant I have applied the relevant statutes, the Sentencing Guidelines launched in January 2018, as well as previously decided cases.

Illegal Possession of Firearm

The Statute

[4] The relevant statute in relation to this count on the indictment is the Firearms Act in particular Section 20. Section 20 states that:-

20.4 1) *A person shall not.*

(a) save as authorized by a licence which continues in force by virtue of any enactment, be in possession of a prohibited weapon; or

(b) subject to subsection (2), be in possession of any other firearm or ammunition except under and in accordance with the terms and conditions of a Firearm User's Licence.

(4) Every person who contravenes this section shall be guilty of an offence, and shall be liable-

(a) if the offence relates to the possession of a prohibited weapon

(i) on summary conviction before a Resident Magistrate to imprisonment with or without hard labour for a term not exceeding five years;

(ii) on conviction before a Circuit Court to imprisonment for life with or without hard labour;

Sentencing guidelines

- [5] The Sentencing Guidelines were launched in January 2018. It details the approach the court should adopt for the offence of illegal possession of firearm. In relation to this offence the guidelines show that the maximum sentence stipulated by the statute is life, however the normal range of sentences should be between seven and fifteen years with the usual starting point being ten years.

Case Law

- [6] There have been a number of decisions that that gives guidance to the sentences that are usually handed down in relation to the offence of illegal possession of firearm. These ranged from a sentence of ten years as in the cases of **Joel Deer v R** [2014] JMCA 33, **Ian Wright v R** [2011] JMCA CRIM 11 and fifteen years in the case of **Paul Kennedy v R** [2015] JMCA Crim 5. In the case of **Mavrick Marshall v R** [2020] JMCA Crim 20 Phillips JA opined that a sentence of seven years placed the appellant at the lower end of the range as it related to the sentencing guidelines and as such could not be considered to be manifestly excessive.

Aggravating Circumstances

- [7] In sentencing the defendant for this offence I have to consider a number of aggravating circumstances which include :-
- a. That the firearm used to commit this offence was never recovered.
 - b. That the firearm was used to commit murder.
 - c. That there is prevalence of this type of crime in society.

Mitigating Circumstances

[8] I have to also consider the mitigating circumstances in the defendants favour which include :-

- a. That the defendant pleaded guilty.
- b. That the defendant has a good social enquiry report
- c. That the defendant has a good antecedent report.

The Sentence – Count 1

[9] I will be abiding by the Sentencing Guidelines which establishes a starting point of ten years. I will increase the sentence by four years based on the aggravating circumstances listed above.

[10] I will reduce the sentence by 1 year for good social enquiry report and another year for good antecedent report. This will reduce the fourteen years to twelve years. I will reduce the sentence by five percent only. This based on the fact that the evidence against the defendant was overwhelming. A conviction in this matter would have been inevitable as the incident was captured on camera. This would reduce the sentence by six months.

[11] I will further reduce the sentence by the three years that he has been in custody. The defendant is sentenced to eight years and six months on count one.

Murder

The Statutes

[12] There are two statutes that give guidance as to the sentences that can be handed down in cases of murder. These are the Offences Against the Persons Act and the Criminal Justice Administration Amendment Act. The sentence for murder is life imprisonment. The issue to be decided is the number of years to be imposed

before the possibility of parole. The starting point in deciding the years before parole is set out in Section 3 of the Offences Against the Persons Act which states that:-

3. (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.

[13] The appropriate sentence is life imprisonment, but what is to be decided is the number of years to be imposed on the defendant before he is eligible for parole. In this case the defendant pleaded guilty and the law allows for discounts once such a plea is entered. The discounts that are allowed are detailed in Section 42 (E) of the Criminal Justice Administration Amendment Act which states that:-

42(E) *Subject to subsection (3), where a defendant pleads guilty to the offence of murder, falling within section 2 (2) of the Offences Against the Person Act, the Court may, in accordance with subsection (2), reduce the sentence that it would otherwise have imposed on the defendant had the defendant been tried and convicted of the offence.*

- (2) Pursuant to subsection (1), the Court may reduce the sentence in the following manner-
- a) Where the defendant indicates to the Court, on the first relevant date, that he wishes to plead guilty to the offence, the may be reduced by up to thirty-three and one third per cent;
 - b) Where the defendant indicates to the Court, after the first relevant date but before the trial commences, that he wishes to plead guilty to the offence, the sentence may be reduced by up to twenty-five per cent;
 - c) Where the defendant pleads guilty to the offence after the trial has commenced, but before the verdict is given, the sentence may be reduced by up to fifteen per cent.
- (3) Notwithstanding subsection (2) the Court shall not impose on the defendant a sentence that is less than the prescribed minimum penalty for the offence as provided for pursuant to section 3(1)(b) of the Offences Against the Person Act.
- (4) In determining the percentage by which the sentence for an offence is to be reduced pursuant to subsection (2), the Court shall have regard to the factors outlined under section 42H, as may be relevant.

[14] Although the Criminal Justice Administration Amendment Act allows for these discounts to be granted, it gives discretion to the courts as to whether these discounts may be applied. Section 42 (H) details what the court should consider when awarding these discounts. It states that :-

42(H) Pursuant to the provisions of this Part, in determining the percentage by which a sentence for an offence is to be reduced in respect of a guilty plea made by a defendant within a particular period referred to in 42D(2) and 42E(2), the Court shall have regard to the following factors namely-

- a) *Whether the reduction of the sentence of the defendant would be so disproportionate to the seriousness of the offence, or so inappropriate in the case of the defendant, that it would shock the public conscience;*
- b) *The circumstances of the offence including its impact on the victims;*
- c) *Any factors that are relevant to the defendant;*
- d) *The circumstances surrounding the plea;*
- e) *Where the defendant has been charged with more than one offence, whether the defendant pleaded guilty to all of the offences;*

[15] In approaching the issue of a possible discount I take into consideration that there are cases where a discount may not be granted. There is a line of cases that proffer this view including the cases of **R v Hastings** [1996] 1Cr. App R (s) 167, **R v Landy** 16 Cr. App. R (S) 908 CA and **R v Davis** 2 Cr. App. R. (S) 168, CA.

[16] This was also held to be the position in the Guyanese case of **The State v Sydney** (2008) 74 WIR 290 where Cummings JA, in discussing the approach to be taken on the defendant entering a guilty plea stated at page 7 of his judgement that :-

.... in some cases, the discount on the sentence may be reduced or even denied altogether owing to the gravity of the offence or the strength of the case against the offender, examples include cases where there is overwhelming evidence against the offender or where he has been caught red handed.

Sentencing Guidelines

[17] The sentencing guidelines mirrors somewhat the Offences Against the Persons Act and as such merely indicates the minimum that the courts should consider in handing down sentences.

Case law

- [18] I will be relying on a number of cases in deciding the number of years the Defendant is to serve before the possibility of parole. I rely on the case of **Carlington Tate v R** [2013] JMCA crim 30. This was a murder committed with the use of a gun, where the defendant was ordered to serve thirty years before the possibility of parole. I note that this was a case of a single murder.
- [19] In the case of **Techla Simpson v R** [2019] JMCA Crim 37, two men shot Constable Joshua Black several times, killing him on the 17th of November 2004. 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. The Court of Appeal reduced the sentence to serve 38 years imprisonment before the possibility of parole.
- [20] The case of **Techla Simpson** is the one that is most on point, with the difference being that the current case is a double murder where the defendant has pleaded guilty.

Time spent in custody

- [21] It is now a settled position that time spent in custody must be deducted from any sentence of the Defendant. This was stated in the case of **Meisha Clement v R** [2016] JMCA Crim 26, in which Morrison P, writing on behalf of the court, at paragraph [34] of the judgment, stated the following:

...in relation to time spent in custody before trial, we would add that it is now accepted that an offender should generally receive full credit, and not some lesser discretionary discount, for time spent in custody pending trial..."

I will reduce the sentence of the defendant by the time spent in custody.

The Sentence – Counts 2 and 3

Aggravating circumstances

[22] In arriving at the appropriate sentence in this matter I have to consider the aggravating circumstances in this case which are :-

- a. These are premeditated murders which were committed at the behest of another person.
- b. That there is a prevalence of this type of crime in our society.
- c. That the firearms used to commit the murders were never recovered.
- d. That these murders took place in the middle of the day.

Mitigating factors

[23] I will likewise have to consider the mitigating circumstances of this case which are:-

- a. That the defendant pleaded guilty although it was not at the first opportunity.
- b. That the defendant has no previous convictions.
- c. That the defendant has a good social enquiry report.

[24] Taking into consideration the age of the defendant, the plea in mitigation, the impact statement of the relatives of the two deceased, and abiding by the case law my starting point is 30 years. Due to the aggravating circumstances listed above I will increase the sentence by 12 years which takes it up to 42 years.

[25] I will reduce his sentence by one year for the good social enquiry report as well as one year for the good antecedent report. This reduces the 42 years to 40 years.

[26] The Defendant did enter a guilty plea and as such, I will grant a discount in this matter. I however have to take into consideration a number of factors including:-

- a. that this is not an early guilty plea.
- b. that the evidence against the defendant was overwhelming.
- c. a large discount would shock the public conscience.

[27] In light of that, I would only give a five percent reduction for his guilty plea. This would reduce his sentence by two years.

[28] The Defendant has been in custody for three years. In keeping with the decision in **Meisha Clement, (supra)** the defendant will be granted full credit for the time he has been in custody. The defendant is sentenced to life imprisonment with the defendant serving thirty- five years before the possibility of parole on each count of the murder.

[29] The defendant is sentenced to :-

- a. Eight years and six months on count one.
- b. Life imprisonment and he is to serve thirty- five years before the possibility of parole on count two.
- c. Life imprisonment and he is to serve thirty- five years before the possibility of parole on count three.

[30] The sentences are to run concurrently.