

IN THE EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA
HIGH COURT OF JUSTICE
(CRIMINAL)
DOMHCR 2011/0024

BETWEEN:

THE STATE
And
KENRICK TYSON

Before the Hon. Justice Birnie Stephenson-Brooks
The 28th day of March, 2012

Mr Gene Pestaina, Director of Public Prosecution and with him Mr Clement Joseph and Miss Arthlyn Nesty
State Counsel for the State
Mr Wayne Nordé and with him Miss Bernadette Lambert and Mr Ronald Charles for the Defendant.

SENTENCING

- [1] Stephenson-Brooks J: Mr. Kenrick Tyson was indicted by the Learned Director of Public Prosecutions, Mr Gene Pestaina, on an indictment dated the 16 September, 2011. He was charged with the murder of Mr Cecil James between the 9th and 10th day of May, 2009 at Number Six, Concord, in the Parish of St Andrew, in the Commonwealth of Dominica. At the end of a three day trial before a mixed jury of his peers he was found unanimously guilty of murder on the 28th day of February 2012.
- [2] A Social Inquiry Report and a Psychiatric Assessment was ordered by the court and Learned Counsel for the Prosecution and the Defence were also invited to make representation to the court on the issue of sentencing. He is now before the court for sentencing. Mrs. Delia Giddings-Stedman, Probation Officer provided the court with the Social Inquiry Report. Griffin C Benjamin MD., MPH, MBA, DM Consultant Psychiatrist with the Community Mental Health Team also provided a Psychiatric Report to the Court. Learned Counsel Miss Arthlyn Nesty on behalf of the Prosecution and Mr Wayne Nordé on behalf of the defendant each made written submissions on sentencing.

FACTS:

- [3] On the night of the 9th day of May, 2009 the Defendant along with his then pregnant girlfriend who was a minor at the time and also the mother of an older child walked from the heights of Sinekou in the Kalinago Territory to the premises of Hibiscus Valley a small hotel property located at Concord number 6, where they waited on the Deceased who lived on the premises in a one room cottage to come home and settle down. Thereafter they went into the said cottage after waiting in a shed on the said premises, and during the said night, in the wee hours of the morning the Defendant and his then girlfriend went up to the cottage and the Defendant removed from the house a grey Discman, a tin of milk, some cream of wheat, corned beef and sardine. The Defendant then went into the house and he hit the Deceased on the head a number of times with a piece of wood that he had picked up from on the outside of the cottage. He removed the wallet belonging to the Deceased took out the money there in and discarded it. He took up the keys to the jeep belonging to the owner of the hotel. He discarded the piece of wood used to hit the Deceased, and the wallet and drove the jeep as far as Ma Tommy Hill where he jammed the jeep on a rock and abandoned it thereafter
- [4] The Deceased was discovered later on the said day of the 10th May 2009 on his bed in a pool of blood with severe head trauma, in the same position as described by the eyewitness for the prosecution. Dr Christmas, the District Medical Officer described the scene which he met and the condition of the deceased and told this court that he could not state a definite cause of death but that based on the injuries seen that the injuries which were severe was the probable cause of death.

THE LAW

- [5] Section 2 of The Offences Against The Persons Act¹ states that
- “Any person who is convicted of murder shall suffer the penalty of death”*
- [6] There is no automatic imposition of the death penalty as this has been deemed unconstitutional.² The sentencing Judge upon conviction of the offence of murder, is now required to conduct a

¹Chapter 10:31 of the Revised Laws of the Commonwealth of Dominica (1990)

sentencing hearing and to determine the appropriate sentence to impose on the defendant. The Court is therefore now clothed with a discretion to impose a sentence other than death for this offence.

- [7] There has been no indication from the Learned Director Public Prosecution that he intends to seek the death sentence in the case at bar, hence it does not arise and as such this court is bound to impose a lesser sentence on the defendant Kenrick Tyson.
- [8] The sentencing Court is obliged to take into consideration the applicable principles of sentencing as was set out in the case of *R-v-Sargeant*³. These principles were identified and adopted by Byron CJ (as he then was) in the case of *Desmond Baptiste –v- R*⁴. The principles as enunciated by Lawton J and adopted by Byron CJ are “retribution, deterrence (both to the offender and potential offenders), prevention and rehabilitation.”
- [9] Being faithful to the principles of sentencing the other factors which must also be take into consideration are the character of the defendant, the nature and gravity of the offence, the design, and the manner of the execution of the offence, the subjective factors which may have influenced the accused’s conduct and the degree of the defendant’s culpability.⁵
- [10] The sentencing court must also weigh the mitigating circumstances against aggravating factors. The particular facts of the case must be considered to determine the appropriate sentence for the convicted man.

THE SOCIAL INQUIRY REPORT AND THE PSYCHIATRIC REPORT:

- [11] In the pre sentence report, members of Mr Tyson’s family and community were interviewed and it was noted that he was brought up in a destitute family where family violence was the order of the day and that Mr Tyson himself was subjected to a violent upbringing at the hands of his mother’s intimate partners. He never knew or had a real relationship with his birth father. He is the father of

²Peter Hughes and Newton Spence –v- The Queen Criminal Appeal No. 20 of 1998 and 14 of 1997 (St Vincent)

³60 Criminal App. R. 74

⁴Criminal Appeal no. 8 of 2003 (St Vincent & The Grenadines)

⁵Re: The Queen –v-Rudy Monelle Case no 15 of 2007 of Antigua and Barbuda

six children. He has a relationship with one and has absolutely no relationship with the others. Kenrick also does not share a close or any relationship with most of his siblings.

[12] Members of the community were of the view that he was aggressive and is a known criminal element in the community. The community response to Kenrick is that he is violent, disruptive and an unproductive member of society. Mention was made of his truancy from school, his alleged use of illegal drugs and alcohol. It should be noted that Kenrick denied using drugs and consuming alcohol to the Probation Officer when interviewed , but members of his family and his community speak to his using same. Kenrick was also described as “one who terrorized the community especially those he could manipulate”⁶.

[13] In his assessment the Probation Officer reported that the defendant in the case at bar is a person who grew up in no stable family structure and who was subjected to severe physical abuse. It was noted that from a tender age he was left to provide for himself which gave rise to his life of criminal activities, resulting in the loss of life of another person but he has shown no remorse. Kenrick was also assessed as a person who has violence as a part of his character traits with anger control issues.

[14] Consultant Psychiatrist Mr Griffin Benjamin presented a report on the defendant and said he was not diagnosed as suffering from any significant mental health problem, with no medical history of psychiatric problems. It is to be noted that Mr Benjamin stated that the defendant “has not accepted responsibility for the murder incident and showed very little remorse for the death.”⁷

THE PRINCIPLES OF SENTENCING

[15] From the Social Inquiry Report and the Psychiatric Report it is clear that the sentencing Court must consider a sentence that would operate to specifically deter the defendant and generally to deter others in the Community from offending in a like manner.

⁶Taken from the Social Inquiry Report

⁷Psychiatric Report on Kenrick Tyson dated 9th March 2012

[16] Learned Counsel, Mr Wayne Nordé, submitted that whilst the defendant is known to the Court it must be recognized that he has no previous convictions for offences of a violent nature. Mr Nordé urged the Court to consider that the incidence of the crimes for which the defendant has been found guilty can be considered fairly low and asked that consideration be given to the overarching principle on seriousness as stated in the SGC Sentencing guidelines to wit:

"The seriousness of an individual case should be judged on its own dimensions of harm and culpability rather than as part of a collective social harm. It should be wrong to further penalize individual offenders by increasing sentence length for committing an individual offence of the type."

[17] Mr Nordé further submitted that the defendant is known to the Court and therefore it would not be necessary for his punishment to reflect the need to prevent him from committing other offences. Learned Counsel also sought to submit to the Court that the defendant continuously expressed deep remorse for his actions. However, this submission is not supported by the Probation Officer and the Psychiatrist who interviewed and assessed the defendant. I hope that the defendant will take advantage of whatever counseling is available to him whilst he is incarcerated at the State Prison in Stockfarm which will assist him to re-integrate into the society after he has served whatever sentence he has to serve. The Court also noted the injury suffered by the defendant which resulted in the loss of a leg.

[18] I take into consideration the issue of retribution, that the sentence imposed by the Court in the case at bar ought to reflect society's intolerance for the defendant's criminal conduct. In sentencing the defendant I am of the view that the sentence ought to reflect the court's abhorrence with the conduct of the defendant.

[19] I accept the aggravating factors as submitted by Learned Counsel, Miss Arthlyn Nesty, for the Prosecution as follows:

- (i) That the defendant was the aggressor
- (ii) That the defendant waited for the deceased to arrive home and settle in for the night and attacked him when he lay unaware and helpless in his bed.
- (iii) That the offence was committed on hotel property where tourist and visitors are to feel comfortable thus destroying the reputation of service and comfort of the hotel and on a

broader scale affecting the tourist package offered by the tourism industry here in Dominica.

(iv) That the accused has prior convictions

I would add to counsel's list the fact that the defendant has failed to show any remorse for his actions, and has received what could only simply be referred to as a bad social inquiry report where he was considered in the most negative way by members of his community and his peers.

[20] The mitigating factor being that the defendant has been on remand since being taken into custody in May of 2009

CONCLUSIONS

[21] The incident leading to the offence in the case at bar was an extremely violent one resulting in the death of Cecil James as he lay asleep in his home. The deceased was murdered during the course of a robbery. The actions of the defendant was cold blooded and brutal.

[22] I am of the view that the defendant's actions were horrendous and that they were pre-meditated and planned and warrants severe punishment. I note also that this was a murder accompanied by robbery, however, it does not fall into the category of the worst of the worst as has been discussed and pronounced upon by the Court of Appeal and the Privy Council whose decisions bind me . As the sentencing judge I have to compare the case at bar with other cases of murder in the jurisdiction. It is also to be noted that upon examination of the facts in this case as established by the Prosecution and accepted by the Jury the aggravating factors outweigh the mitigating factors.

[23] In a number of decisions across the region the sentences for murder have ranged from 7 years to life in prison.⁸

⁸**Augustus Dennis –v- The State** (DOMCRAP 2003/0003) where the sentence was life imprisonment; **Nardis Maynard –v- The Queen** Op Cit where the sentence was imprisonment for life; **Kamal & Jamal Liburd Case** Criminal Appeal no 9&10 of 2003 (St Christopher & Nevis) where Kamal was convicted of the offence of murder and was sentenced to life imprisonment and Jamal was sentenced to thirty years upon conviction of manslaughter; **The Queen –v- Lyndon Lambert** Criminal Case no 0057 of 2003 Grenada where the sentence was life in prison upon conviction of murder; Delano Smith –v- The Queen (AXAHCRAP 2009/0001) The defendant was sentenced to life in prison upon conviction of murder.

- [24] In sentencing the defendant I am conscious of the fact that there is a need to send the message out to all and sundry in the Commonwealth of Dominica that crime will not be tolerated. I will impose a sentence that indicates that the Court is prepared to deal very seriously with offences of this nature; with offenders who take the lives of others and show no remorse; with offences that affect the bread and butter of the persons involved in the tourist industry; with offences which result in death as a result of a home invasion and in doing so I am also prepared to temper justice with mercy.

- [25] I have taken into consideration the principles of sentencing as cited herein, the mitigating and aggravating factors and the gravity of the offence. I have also taken into account the relevant legal principles in determining the penalty to impose on the defendant having paid particular regard to the circumstances in which the defendant committed the offence.

- [26] I have taken into careful consideration Learned Counsel's for the defence Mr Wayne Nordé's plea in mitigation. However, I note that the defendant according to the reports presented to the court has shown no remorse for his actions.

- [27] I am of the view that based on the evidence led in this case and accepted by the jury that the defendant Kenrick Tyson is responsible for the death of Cecil James . Further, that the murder in the case at bar was senseless, cold blooded and brutal. It is also noted that the aggravating factors far outweigh the mitigating factors and the social inquiry report was very compelling.

- [28] In view of the totality of the circumstances attendant upon this case, I am of the considered view that the appropriate sentence to impose on the defendant in this case is life imprisonment.

- [29] I acknowledge the submissions made by both counsel in this the sentencing phase and I also commend both teams of counsel for the manner in which they have conducted this case.

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M E Birnie Stephenson
High Court Judge