

BARBADOS

CRIMINAL DIVISION

Indictment No: 80 of 2013

The Queen vs. Devon Shaquille Carrington

SENTENCING REMARKS

Devon Shaquille Carrington,

- [1]. On Thursday, 10th October, 2013 you were arraigned and pleaded “guilty” to the offence of manslaughter.
- [2]. **The Facts:** Following your plea, the learned Director of Public Prosecutions, Mr. Charles Leacock, Q.C. outlined the manner in which Kevin Stoute, a student of the Coleridge and Parry School, met his tragic and untimely death at your hands on the afternoon of June 14th, 2010.
- [3]. He told the Court that after school on the afternoon of June 14th, 2010, a group of friends left the Coleridge and Parry School in the north of the Island, and travelled home to the Lightfoot Lane area of the City. You, Eric Narcisse and the deceased, Kevin Stoute were all part of the group.
- [4]. After arriving home from school around 3 o’clock, you and your friends went outside into the yard. At about 4 o’clock you and your friends decided to play a gambling game called “high dice” involving the throwing of two dice. During the game, a dispute arose between you and the deceased as to who had thrown the highest number and which of you should hand over the money, which was a silver dollar.

- [5]. During the quarrel, eye witness, Eric Narcisse saw you and the deceased pushing at each other. According to him, you were both claiming to have won the dollar. He then saw you take a few steps back from the table. You then told Eric to move, after which he observed you with a fair-sized piece of concrete block in your hand which you aimed and threw at the deceased, striking him in his head.
- [6]. The deceased then stumbled and fell to the ground a distance from the house near to the gutter. The police were summoned along with ambulance personnel who on arrival found the deceased dead at the scene. The body was not removed and Dr. Andrew Murray eventually certified death at 6:20 p.m. later that evening.
- [7]. Pathologist, Dr. David Gaskin conducted an autopsy on June 17th, 2010 and his report revealed an abrasion on the left side of the face with extensive bleeding over the brain. Dr. Gaskin concluded that the cause of death was bleeding over the brain which could have been caused by blunt trauma.
- [8]. Following the arrival of the police at the scene, investigations began and you were given your rights in the presence of your mother and made a number of oral statements.
- [9]. You were again interviewed by police later that night at the station in the presence of your mother and gave police a written statement in your own handwriting admitting your role in the deceased's death and giving your version of what happened.
- [10]. In your written statement you told police, *inter alia*, that during the gambling game you and the deceased had bet on who “*throw the highest point.*” According to you, you had thrown an eight (8), while the deceased had thrown a seven (7). You told the deceased to “*give me [your] money*”.

[11]. You said the deceased had replied “no” and had grabbed your shirt, pushed you to the piling, punched you in the face and had hit you with a bottle in your head and told you to leave.

[12]. You also said that as you were leaving, the deceased had armed himself with rocks and that you had also taken up a rock and had thrown it at the deceased in defending yourself.

[13]. **Basis on which the plea was accepted:** Following the outline of facts, the learned Director of Public Prosecutions told the Court that the evidence of the witnesses was consistent with your account that there had been a dispute over who had thrown the highest number of points on the dice and that there had been scuffling between you and the deceased who had also grabbed you and refused to pay. The learned Director explained the reason for his accepting the manslaughter plea in the following terms:

“...it is a most unfortunate incident between two young people who were gambling over a most trivial manner...and...I was not satisfied that he had the intention to kill and that is why...I’ve indicted it for manslaughter.”

[14] **Your Criminal Antecedents:** The Court was informed that you have no previous convictions and this is your first offence.

[15] **Remand Time:** On November 21st, 2013, Prison Officer, Mr. Bentley Boucher, informed the Court that you had up to that date, already spent a period of 1,254 days in custody awaiting the final disposition of this matter.

[16] This effectively means that as at today’s date, you would already have spent a total of 1,381 days or [3 years 286 days] on remand for this offence!

[17] **Your Pre-Sentence Report:** As required by section 37(1) of the *Penal System Reform Act, Cap. 139*, a Pre-sentence Report was ordered. The Report was read into evidence by Senior

Probation Officer, Ms. Denise Agard on November 21st, 2013 and has since been reviewed by the Court.

[18] The Report has shed some light on your family, educational and social background and your current attitude to the offence.

[19] The Report reveals that you are the youngest of six children born to Mr. Trevor Carrington and Mrs. Sonia Carrington. Both your parents spoke highly of you. However, your mother indicated that during your mid-adolescent years you associated with individuals who were deviant and were warned about them.

[20] You admitted to the Probation officer that during your adolescent years you had experienced some challenges with your transition to secondary school and that you had gone through a period where you displayed deviant behavior at school and had to be reprimanded. You also said that you were unable to cope with the sudden death of a close friend in September, 2008 and admitted that you started smoking marijuana at the age of 14. However, you stopped using marijuana after you recognized that the use of marijuana altered your reactions to situations and made you hasty and anxious.

[21] The Report revealed that your academic performance at the Coleridge and Parry School was *“average with a poor work ethic”*. The school records indicated that you were *“often distracted and involved in truancy.”* Moreover, there was *“a history of delinquent reports”* made against you which included *“two or three suspensions.”* General remarks indicated that you had *“been showing signs of being a troubled young man from as early as first form”* and school officials recommended that you be *“psychologically/emotionally evaluated”*.

[22] On being informed of the school’s recommendation, your mother told the Probation officer that she had not been made aware of the school’s recommendation at the time and had therefore not sought to have you evaluated.

[23] With respect to your current attitude to the offence, the Report states that you have expressed remorse for your actions. You said that you were “*haunted*” by the incident. Also, you said it was never your intention to take anyone’s life. You expressed the desire for an opportunity to redeem yourself and be offered professional assistance in order to cope with the emotional trauma that this incident has caused.

[24] The Report also includes victim impact information taken from the deceased’s parents who informed the Probation Officer that they are “*still trying to come to terms with the loss of their son.*” Additionally, the siblings of the deceased - three sisters and one brother - are said to be not coping very well with the deceased’s death. Mrs. Stoute revealed that she “*was only exposed to one session of grief counseling*”.

[25] She attributed her emotional strength to her faith in God and was confident “*in the justice system to adjudicate the matter accordingly.*” Mr. Stoute lamented that he misses his son dearly and would never recover from the loss he suffered. He expressed the opinion that “*the justice system would work to determine a suitable sentence.*”

[26] In closing, the Probation Officer, Ms. Agard informed the Court that, in her assessment, you pose a low risk of re-offending. She, however, states that you need to address matters such as employment and education and your choice of acquaintances and how you spend your leisure time. Failing to address such matters, she cautioned, would put you at a higher risk of re-offending in the future.

[27] **Your Psychological Report:** The Court also ordered a Psychological Report which was prepared and read into the record by Prison Psychologist, Mr. Sean Pilgrim on February 21st, 2014 and has been considered by the Court.

[28] Mr. Pilgrim informed the Court that during the meetings he conducted with you, you presented as a polite and courteous individual and were properly attired and well groomed. He reported that you expressed a strong to desire to change the overall course of your life but you

did not appear to have a full recognition of the challenges you may meet and this revealed a degree of immaturity commensurate with someone of your age and experience.

[29] The Report revealed that you have a low risk of experiencing clinical problems and that test results show that your *“potential for emotional or behavioural problems is substantially less than is typical for community-dwelling adults.”*

[30] In relation to your ability to think in a flexible and open manner which, from a psychological perspective, can affect your understanding of rules and laws, the tests revealed that you demonstrated an understanding of the importance of laws and social expectations for behavior, and also demonstrated an awareness of how rules can affect your life and how you can learn from his mistakes. However, an assessment of your ability to recognize problems that you currently face, shows that you have a limited recognition of the scope of your current and likely future challenges.

[31] Although you have positive goals, the tests show that your ability to achieve those goals is limited because you have no plans for how to achieve those goals and you *“did not appear to recognize that a plan was needed to achieve any goal.”*

[32] You do not present any features of major psychological disorder or emotional impairment at this time. However, there is evidence of intellectual immaturity which can be explained in part by your limited academic experiences and young age at the time of your remand. Mr. Pilgrim said that you consistently expressed remorse about the actions that led to your incarceration. He also found that you appear to have a realization that your conduct was unacceptable.

[33] Psychologist, Mr. Sean Pilgrim concluded that you are a good candidate for inclusion in rehabilitative programs, and that any such programs should focus on the development of your vocational and academic skills. He further stated that you *“may most benefit from participating in treatment which is not delivered in such a punitive environment and also offers him the chance to be exposed to more pro-social role models.”*

[34] Primarily due to Prison Psychologist, Mr. Pilgrim's recommendation that the Court consider a non-custodial option which would ensure that you benefit from participation in counseling and other rehabilitative programs not delivered in a punitive environment, the Court decided to recall Prison Psychologist, Mr. Sean Pilgrim and Probation Officer, Miss. Denise Agard to render their advice to the Court as to what specific treatment and counseling options were available to assist with your rehabilitation outside the prison environment.

[35] On Friday March 14th, Prison Psychologist, Mr. Pilgrim informed the Court that he had discussed his findings and your treatment needs with two psychologists in private practice who had indicated that they would be willing to assist in your treatment. He told the Court that he could provide the names of the psychologists he had identified, if the Court so requested.

[36] Defence Counsel, Mr. Andrew Pilgrim, Q.C. confirmed that a family friend, Ms. Marlene Bamerni, had indicated her willingness to pay for and subsidize the cost of any privately arranged counseling or schooling which the Court may order you to undergo.

[37] Probation Officer, Ms. Agard also recommended that you be placed under a period of supervision by the Probation Department to be determined by the Court. She also informed the Court that you could be placed in the Department's "*As Man*" Program which caters to young males between the ages of 16 to 24.

[38] The 3 month "*As Man*" Program, she said, was designed to assist young men to cope with the challenges and responsibilities of manhood and explained that participation in the Program would expose you to such topics as: defining manhood, self awareness, relationships, securing employment, the value of work, drug abuse, sexuality, anger management and dispute resolution.

[39] Ms. Agard also advised the Court that since the "*As Man*" Program is in a hiatus and awaiting funding for the new Financial Year, you could, in the interim, be enrolled in the program operated by Drug Education and Counseling Services operated by Mr. Roger Husbands in Belleville. Ms. Agard explained that in that program, a treatment plan would be designed for

you and depending on the objectives, you could be exposed to academics, anger management, group therapy and also participate in their mentorship program.

[40] Ms. Agard highly recommended this particular program and expressed the view that you will benefit greatly from participation in it.

[41] ***Discussion:*** It is now for this Court to determine what is the appropriate sentence to be imposed upon you in this matter having regard to its judicial obligations under sections 35 to 41 of the *Penal System Reform Act, Cap. 139*.

[42] In arriving at your sentence, the Court has also borne in mind its judicial obligations under the *Penal System Reform Act, Cap. 139* which introduced a new regime of punishments in Barbados and laid the statutory foundation for a penal system in which imprisonment is to be used as a punishment of last resort.

[43] The *Penal System Reform Act* enlarged the powers of criminal courts and permits the Court to impose non-custodial sentences in all cases except those in which the offence was so serious or in which the offence is of a sexual nature or so violent that imprisonment is the only option.

[44] **Section 35(2)** of the *Penal System Reform Act*, accordingly, provides, among other things, that:

“...the Court shall not pass a custodial sentence on the offender unless it is of opinion

(a) that the offence...was so serious that only such a sentence can be justified; ..”

[45] In forming its opinion as to the seriousness of the offence, and as mandated by section 37(3) of the Act, this Court, has taken into account all the available information about the circumstances of the offence including such aggravating and mitigating factors of the offence, as well as of you the offender, as have been found, together with information about the offender obtained through the pre-sentence report and psychological reports.

[46] The Court is clearly cognizant of the fact that this offence is a very serious offence in which a young school boy tragically lost his life after being struck in the head by a piece of concrete block which you admitted throwing at him in the course of an argument and a struggle.

[47] The Court however found that seriousness of the offence was, however, significantly reduced by the following mitigating factors which in the view of the Court, place the offence at the low end of the manslaughter scale: These were:

i. The offence was not premeditated and took place in the heat of an argument in circumstances of spontaneity during the gambling game;

ii. The facts suggest that there could have been some element of provocation in the non-technical sense since according to you, the deceased had grabbed your shirt, pushed you to the piling, punched you in the face and hit you with a bottle in your head and armed himself with rocks;

iii. The facts also suggest a degree of self defence on your part, since according to your written statement, you threw the rock at the deceased in self-defence only after the deceased had armed himself with rocks.

[48] Focusing next on you as the offender, the Court then took into account the factors which, in the view of the Court, have reduced the seriousness of the offence and reflect a level of personal mitigation of you as the offender. These were:

i. Your relatively early guilty plea; [N.B. This incident took place in June, 2010. Following the Preliminary Inquiry, you were indicted 2 years later in June 2013 and entered a guilty plea at the earliest opportunity, avoiding a lengthy trial.]

ii. Your very young age at the time of the offence; [N.B. You were 16 years at the time of the incident and are now 19 years.]

iii. Your very favourable Pre-Sentence Report which reveals in particular that you are at a low risk of re-offending;

iv. The remorse which you have expressed for your actions as disclosed in the Pre-Sentence and Psychological Reports and which you have publicly expressed again today in this courtroom;

v. The strong plea in mitigation made on your behalf by Defence Counsel, Mr. Pilgrim, QC who told the Court that with appropriate counseling you can, in his view, remain away from the Courts for the rest of your life;

vi. Finally, I have taken into account as a mitigating factor, the fact that as long as you live, you will carry with you the knowledge that your senseless and unlawful actions on that fateful day, almost 4 years ago now, took the life of another human being.

[49] In his mitigation, Mr. Pilgrim QC urged the Court to find that this particular offence, though serious, was one which in his view falls squarely within category 4 of the *Pierre Lorde* guidelines. He asked the Court to find that due to the early guilty plea, this is a case which, if the Court were minded to impose a custodial sentence, should, based on the guidelines, attract a sentence of less than 8 years.

[50] Discussing the aggravating and mitigating factors of the offence outlined in *Pierre Lorde*, Mr. Pilgrim submitted that the killing took place during an argument and occurred in spontaneous circumstances. He submitted also that there was some suggestion of provocation in the non-technical sense, as well as a possibility that since the deceased had armed himself with rocks, you had thrown the rock in self defence.

[51] He pointed to your age at the time of the offence, your timely guilty plea and the fact that there was clear evidence of remorse and contrition for your actions. Mr. Pilgrim, submitted that you are the type of person who with the appropriate sentence and the appropriate counseling would remain out of the court system for the rest of your life.

[52] He cited the case of *Kemal Blades v the Queen, Criminal Appeal No. 12 of 2002, Decision of December 11, 2003*. That was a manslaughter case, arguably more serious than this case, where a sentence of 4 years was imposed on a young offender (who was only 15 years at the time of the offence) but in which the deceased who was also of tender age was stabbed in the stomach with a knife following an altercation. In closing, he urged the Court to be as lenient as possible given all the circumstances.

[53] For his part, Mr. Watts agreed wholeheartedly with Mr. Pilgrim's submissions and stated that he was quite comfortable with a non-custodial sentence which would promote your rehabilitation and place your life on a developmental path for the future.

[54] Ultimately, after considering the outline of facts, together with the Pre-Sentence and Psychological Reports and the recommendations of Probation Officer, Ms. Agard and Prison Psychologist, Mr. Sean Pilgrim, together with the respective submissions of Counsel; and after considering also the lengthy time you have already spent on remand for this offence, the Court is satisfied that despite the seriousness of the offence which claimed the life of Kevin Stoute, no useful purpose will be served by the imposition of a custodial sentence upon you in this case.

[55] In the interest of promoting your rehabilitation, the Court is satisfied that you will benefit from being placed under a period of probation to be supervised by the Probation Department during which you can receive: firstly, psychological counseling of the kind recommended by Prison Psychologist, Mr. Pilgrim which will be focused on helping you to make better decisions and to address not only anger management issues, but also how you manage your feelings as a whole, how you relate to other persons, how you solve problems and make decisions.

[56] During the period of Probation also, and as recommended by Probation officer, Ms. Denise Agard, the Court is convinced that you will also benefit from participation, if not in the “*As Man*” Program conducted by the Probation Department, in an appropriate program to be designed for you and organized by the Drug Education and Counseling Services Agency managed by Mr. Roger Husbands which Ms. Agard described to the Court.

[57] **Order of the Court:** *Devon Shaquille Carrington*, in accordance with its powers under sections 41 and 17 of the *Penal System Reform Act*, and with the aim of facilitating your rehabilitation, the Court proposes (*with your consent*) to pass the following “combination order” on you, which sentence, in the view of the Court, is most suitable for you in the particular circumstances of this case, namely:

- 1) You are hereby ordered to be and remain under the supervision of a Probation Officer for a period of three (3) years commencing immediately;
- 2) During this period of probation, you will also perform appropriate unpaid work to be organized by your Probation officer for an aggregate of no less than 100 hours;
- 3) As a condition of this order, you will also attend and satisfactorily complete a programme of Psychological Counseling to be arranged at your expense, under the supervision of the Probation Department after consultation with Mr. Sean Pilgrim;
- 4) As a further condition of this order, during the probation period, you will also attend and satisfactorily complete a suitable program (or programs) of counseling (including

vocational and academic study) which to be arranged for you by and under the supervision of the Probation Department, whether at your expense or otherwise;

- 5) The Chief Probation Officer is directed to make the necessary administrative and logistical arrangements to ensure that the foregoing conditions of this order are met.
- 6) The Chief Probation Officer is also directed to prepare and place before the Court at 6-monthly intervals, progress reports on the status of this order;
- 7) The Court has fixed **Monday, September 29th, 2014** for submission and review of the first progress report.

[58] *Devon Shaquille Carrington*, in passing this sentence, this Court has placed a great degree of trust and confidence in you. I urge you to take full advantage of this opportunity for a “new beginning”, which this sentence of probation offers to you.

[59] Provided you agree to the conditions of this order, the sentence will commence immediately and you will report to the Chief Probation Officer, at the Probation Department, Roebuck Street, Bridgetown before the end of the day.

[60] *Devon Shaquille Carrington*, as you would have heard, the sentence which this Court has just passed is a non-custodial sentence. I must caution you that if during the period of your probation you do not comply with the conditions which have been imposed, you will be liable to be brought back to Court and this Court is at liberty to impose a custodial sentence on you.

Do you understand what I have just said?

[61] This is the order of the Court.

Maureen Crane-Scott
Judge of the High Court
2014-03-28