

**BARBADOS**

**CRIMINAL DIVISION**

**Indictment No: 93 of 2013**

**The Queen vs. Greville Rowlando Headley**

**SENTENCING REMARKS**

*Greville Rowlando Headley,*

- [1.]           **Background:** On 23<sup>rd</sup> September, 2013, you pleaded “not guilty” to the murder of Michael Albert, but “guilty” instead to manslaughter.
- [2.]           **The Outline of Facts:** Your plea was accepted on behalf of the Crown by Crown Prosecutor, Mr. Elwood Watts, after which the learned Director of Public Prosecutions, Mr. Charles Leacock, Q.C. outlined the facts of the case and described how Michael Albert met his death at your hands on the morning of January 26<sup>th</sup>, 2012.
- [3.]           The learned Director told the Court that you and the deceased were paternal half brothers. You had, at one time, both resided with your father in a two bedroom apartment situated at Block 9D, Country Park Towers, Country Road, St. Michael until the deceased moved out.
- [4.]           The Court heard that although you were the younger brother you had, during your father’s lifetime, always been the one who was responsible for paying the rent and the utilities and for keeping the house going.
- [5.]           After your father’s death in 2011, the deceased moved back into the Country Park Towers unit along with his girlfriend and thereafter, you and the deceased both occupied the unit along with your respective girlfriends. The Court heard that although you were half brothers, you never got along very well together and there was

quite a bit of tension and turbulence in the household, particularly after the deceased and his girlfriend moved back in.

[6.] You and the deceased each occupied a bedroom in the apartment and the living arrangement which was worked out between the four of you was that one couple would come down and use the kitchen in the mornings before the other.

[7.] On the morning of 25<sup>th</sup> January, 2012 the deceased and his girlfriend, Sherry-Ann Virginie, came down first and made their breakfast. Subsequently, you and your girlfriend, Nikita Barker, came downstairs and whilst you were in the process of using the kitchen, the deceased returned to the kitchen and removed items belonging to you from the refrigerator.

[8.] Upon inquiring of the deceased why he had taken your things from the refrigerator, the deceased replied that you did not own of the fridge. A scuffle and an argument then broke out between you and the deceased and the situation quickly got out of control.

[9.] The deceased's girlfriend, Sherry-Ann, and your girlfriend, Nikita were both present during the altercation. The deceased's girlfriend, told police that the deceased seemed to be going towards the door when a liquid was thrown on him and he was set on fire. The deceased suffered burns to about 60 percent of his body, while you also received burns to your hand, which the Court heard, were not substantial.

[10.] The Court was told that efforts were made to extinguish the fire using water and wet towels, but the water supply to the entire compound had apparently been deliberately turned off.

[11.] The Director of Public Prosecutions explained that the accelerant used could have been some form of thinners (which would have been highly flammable and caused the conflagration) not only of the deceased, but much of the unit was also destroyed. The

police and fire service were summoned and due to the quick response, the fire was quickly extinguished.

[12.] The deceased was rushed to the Queen Elizabeth Hospital but succumbed to his injuries on the 26<sup>th</sup> January, 2012, the following day. A post-mortem examination conducted by Dr. Corinphia Dupius on 2<sup>nd</sup> February, 2012, revealed that the cause of death was as a result of fourth degree burns covering 60 per cent of the deceased's body.

[13.] According to Dr. LaTonya Arthur, a Registered Medical Practitioner, you sustained burns to the face, arms and dryness to the throat. You were treated for your injuries on the 25<sup>th</sup> January, 2012 and discharged the same day.

[14.] Police investigations commenced and during the course of the investigations you made oral statements and also gave a written statement to police admitting your role in the deceased's death.

[15.] In your written statement you told police, *inter alia*, that on the morning in question, as you and your girlfriend were making breakfast, the deceased had come downstairs and taken up all of your stuff out of the fridge. You also told police that when you inquired as to why he had done so, the deceased told you that he did not care anything about you and that you did not own anything about there.

[16.] According to you, the deceased had then taken up your things and put them on the staircase, causing you to ask him if he was "*a so and so idiot*". You told police that the deceased had held you in your neck and pushed you into the bedroom and had cuffed you in your neck and back, causing you to fall on the ground where he jumped from the bed on top of you. He had also threatened to kill you and had grabbed for something.

[17.] You told police that you had then seen the deceased with a lighter and a skilnet and that you scrambled up from the ground and tried to get out. According to you,

the lighter had a flame and the skillet had in a liquid and you had hit the skillet out of his hand and your hand caught fire when the liquid splashed on you.

[18.] According to you, the deceased had also caught fire. You ran from the bedroom to the back sink, washed off your hands and had walked to the back step where the deceased came and held onto the right side of your face and pushed you out of the way. The house, you said, was on fire. You then went to the front of the house and asked someone named Tara to call the fire service and you remained there until the police and the fire truck arrived. You later told police that you had not seen your brother since that day.

[19.] The accuracy of the facts outlined by the learned Director of Public Prosecutions was confirmed on your behalf by Defence Counsel, Mr. Andrew Pilgrim QC and the Court has, accordingly, accepted the same for sentencing purposes.

[20.] **Basis on which the plea was accepted:** In his outline, the learned Director of Public Prosecutions told the Court that while the circumstances surrounding how the fire started were somewhat in dispute, it was not in dispute that the deceased got the bulk of burns and you got some burning on your hand which seemed to suggest that the fire was started by you. He explained the legal basis for his having accepted the manslaughter plea in the following terms:

*“I have accepted manslaughter in this case in the circumstances that there was clear evidence of provocation and the evidence of provocation is well borne out by a number of the witnesses that it would seem that the deceased, having moved back in the place, being older, and a little physically bigger... It was his precipitous action on the morning in question that led to this most unfortunate incident and his untimely demise. And in those circumstances, I feel obliged that I should accept manslaughter ...based on provocation.”*

[21.]           **The Allocutus:** The *allocutus* was put to you on the 21<sup>st</sup> February, 2014 and during your *allocutus*, you stated that you were sorry about the whole situation that occurred between you and the deceased. Moreover, you were sorry that the deceased had to die and that you were absolutely sorry for everything.

[22.]           **Your Criminal Antecedents:** Police Constable, No. 84 Holman Smith informed the Court that you have one criminal conviction dating back to 22<sup>nd</sup> September, 2004 when you were convicted of having cannabis in your possession.

[23.]           **Your Pre-Sentence Report:** As required by section 37 (1) of the *Penal System Reform Act, Cap. 139*, a Pre-sentence Report was obtained and was read into evidence by Probation Officer, Diana Goodridge on 10<sup>th</sup> December 2013 and has been reviewed by the Court.

[24.]           The report has shed some light on your family, educational and social background, your employment history and your current attitude to the offence.

[25.]           The Report discloses that while you were raised in the same home as your half brother, Michael Albert, you were regularly bullied by him. You also told the Probation Officer that after your brother returned to the apartment to live just prior to the incident, the bullying continued and had even become physical.

[26.]           Police had been called to the house on 2 occasions and that one of these occasions was as a result of the deceased having changed the locks to the apartment. The Court was told that due to the situation within the home, you and your girlfriend had even made attempts to move to alternative accommodation.

[27.]           **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*.

[28.] Reasons for imposing a Custodial Sentence - Section 35(4): It has often been said that the offence of manslaughter, almost more than any other offence, is one which can vary enormously in its gravity from case to case, and may range from near murder at one extreme to almost an accident on the other.

[29.] As required by *section 35(4)* of the *Penal System Reform Act* and after considering the outline of facts and the manner in which this offence was committed, together with the Pre-sentence Report and the evidence of your character witnesses, the Court has formed the opinion that this case falls at the lower end of the manslaughter scale.

[30.] In the view of the Court, this is a tragic case of bullying within the family arena. It is a tragic case of manslaughter, where a brother (the person who was the target of bullying) stands before this Court to be sentenced for killing the bully, who sadly, happens to be his own brother!!!

[31.] Nonetheless, as tragic as this case may be the Court has formed the opinion that *subsection (2)(a)* applies and that this offence is so serious that only a custodial sentence should be passed upon you in this case.

[32.] In keeping with the *Suratan1[1]* sentencing guidelines adopted by the Barbados Court of Appeal in the case of *Ricardo Deverne Griffith v. The Queen Criminal Appeal No: 6 of 2007; 2009-06-19*, I have borne in mind that as this is a case where the Crown has accepted a plea of not guilty of murder but guilty of manslaughter by reason of provocation, I am, as the sentencing judge, required to make a number of assumptions in your favour by way of mitigating the seriousness of the offence.

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1[1] *Attorney General's Reference (Nos. 74, 95 and 118 of 2002) (Suratan and others) (2003) 2 Cr. App. R. (S) 42.*

[33.]            Assumptions: Applying the *Suratan* guidelines, the Court has therefore assumed firstly, that the seriousness of this offence has been mitigated by the fact that at the time of the incident you were provoked and lost your self control.

[34.]            The Court has, secondly, assumed that you were caused to lose your self control by the following facts and circumstances disclosed on the record:

- a) I have accepted the fact that on the morning of this incident, as you and your girlfriend were in the kitchen making breakfast, the deceased Michael Albert came back downstairs and, apparently bent on picking a fight with you, started removing your things from the refrigerator;
- b) I have also accepted the fact that after being asked why he had done so, your brother told you that he didn't care anything about you and that you didn't own the refrigerator or anything about there;
- c) I have further accepted the fact that the deceased, in another provocative act, had again taken up your things and put them on the staircase, causing you to inquire whether he was a "*so and so*" idiot;
- d) Additionally, I accept the fact that, according to you, the deceased had then held you in your neck and pushed you into the bedroom and cuffed you in your neck and back;
- e) I have also accepted the fact that after you had fallen on the ground, the deceased jumped from the bed on top of you and threatened to kill you;
- f) Finally, I have accepted the fact that according to you, the deceased had taken up a lighter with a flame and a skillet with liquid in it and come at you, causing you to scramble up from the ground and to hit the skillet out of his hand.

[35.] Applying the *Suratan* guidelines, the Court has next assumed that your loss of self control in the several circumstances just outlined was reasonable in all the circumstances, even bearing in mind that persons are expected to exercise reasonable self control over their emotions and that as society advances it ought to expect higher measures of self control.

[36.] Finally, the Court has assumed, in keeping with *Suratan*, that the circumstances surrounding this killing were such as to make your loss of self control sufficiently excusable to reduce the gravity of your actions from murder to manslaughter.

[37.] The Court has also determined that the seriousness of the manslaughter offence in this case was significantly mitigated by the following factors which the Court has also taken into account in determining offence seriousness:

- 1) Based on the facts as outlined, on the day in question Michael Albert was the clearly the aggressor who in deliberate acts of obvious provocation initiated the quarrel and the fight with you in the apartment as you and your girlfriend were making breakfast;
- 2) The Court is satisfied that your hitting the skillet out of the deceased's hand was not a pre-mediated or intentional act on your part and that the facts disclose some evidence of self defence;
- 3) The Court is further satisfied that you did not set out deliberately to kill or to cause serious bodily harm to the deceased man and that by hitting the skillet from your brother's hand in circumstances where he was also holding a lighter with a flame and a skillet with liquid in it, you were seeking only to defend yourself from perceived and imminent harm;

- 4) The Court has accepted the evidence of your employer and character witness, George Mendes who under cross examination and when questioned about whether you had ever confided to him about difficulties with your brother, told the Court that your brother man-handled you and there were numerous instances when you had come to work bruised and in tears;
- 5) The Court has also accepted the evidence of your sister Kate Headley, who told the Court that while she had never witnessed it herself, she had, before the incident, heard about and been aware that there had been bad blood and relationship problems between the two brothers over at the Country Park Towers;
- 6) Finally, the Court has accepted the evidence of your character witness, Nikita Barker, who told the Court that she knew of situations where the deceased had been abusive to you prior to her going to live at the apartment at Country Park Towers. More importantly, she told the Court that while living at the apartment, she had personally seen the deceased being physical with you and clearly confirmed that the deceased had developed a reputation in the neighbourhood of being abusive to you.

[38.] In summary, the Court is satisfied that this was a tragic killing of a human being in a domestic violence setting, in which no intrinsically dangerous weapon was used and in which the act which caused death took place during a fight between two brothers and where the obvious and only aggravating factor was the fact that one brother, Michael Albert, died. The Court is also satisfied that the circumstances surrounding the killing, were, significantly outweighed by numerous mitigating factors both as to the offence itself, as well as in relation to you as the offender.

[39.] The Court approached this matter by advertng firstly to *section 6 of the Offences Against the Persons Act, Cap. 144* which stipulates that the permitted maximum custodial

sentence which may be imposed on any person convicted of manslaughter is imprisonment for life. However, as is clear from the manslaughter guidelines established by the Barbados Court of Appeal in *Pierre Lorde (2006) 73 WIR 28*, the statutory penalty of imprisonment for life is to be reserved only for the most serious manslaughter offences.

[40.] In issuing its manslaughter guidelines in *Pierre Lorde*, in 2006, the Barbados Court of Appeal stressed that the guidelines were “*not to be construed as putting sentencers in a kind of straight jacket or fettering in any way the judicial discretion which must remain at the heart of the sentencing process.*”

[41.] In its later decision in *Curtis Joel Foster (DPP’s Reference No 1 of 2010) (unreported) Decision of 11 February, 2011* Peter Williams JA of the Barbados Court of Appeal observed that the guidelines in *Pierre Lorde* are now well established and are routinely followed. He suggested that it is helpful to consider the 4 guidelines set out in *Pierre Lorde* on a sliding scale of 1 to 4, with 1 being reserved for the most serious offences and 4 for the least serious.

[42.] As I have alluded to earlier on in these remarks, the Court recognizes that when considering offence seriousness in relation to the offence manslaughter, that it is an offence which may range in degree of severity between those cases close to murder at one extreme, to those cases at the other end of the scale where the facts suggest that the killing may almost be considered to be accidental.

[43.] The Court is satisfied that the sentencing guidelines laid down in *Pierre Lorde*, represent an attempt by the Barbados Court of Appeal (some may argue with a limited degree of success) to identify and establish for this jurisdiction the vast disparity in the range of sentences which can be passed when a court is sentencing an offender for the offence of manslaughter.

- [44] Against the foregoing background, I am satisfied that the task which lies before me in my role as sentencer in this matter, is to seek as far as possible to position this case within the appropriate *Pierre Lorde* guideline while at the same time complying with the procedures set out in the *Penal System Reform Act*.
- [45] In his mitigation, Mr. Pilgrim QC urged the Court to find that this offence is one which 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 should, based on the guidelines, attract a sentence of less than 8 years.
- [44] Mr. Pilgrim, QC cited the case of *Kemal Blades v the Queen, Criminal Appeal No. 12 of 2002, Decision of December 11, 2003*. He also helpfully submitted for the Court's consideration, two English Court of Appeal cases *R. v. Richard William Shelton, [1979] 1 Cr. App. R. (S) 202*. and *R. v. Michael Francis Harty, [2002] 2 Cr. App. R. (S) 57* both of which involved an unintentional killing by a brother of his brother in the course of a family quarrel.
- [45] In *Shelton's case*, an argument broke out between 2 brothers and developed into a physical struggle in the course of which the deceased was pulled to the floor and accidentally kned in the body by the appellant causing internal injuries to the spleen and pancreas which later caused death. The sentencing judge passed a sentence of 1 year, but this sentence was subsequently suspended by the English Court of Appeal on the basis that in their view, the case did not warrant an immediate custodial sentence.
- [46.] *Harty's case* involved a manslaughter offence where the appellant was shown to have kicked his brother in his mouth before deliberately jumping on his stomach with both feet causing massive intra abdominal haemorrhage from which he later succumbed. The English Court of Appeal found that there were serious aggravating features in the case, particularly the appellant's stamping on the deceased which involved what they

considered, “unnecessary and excessive and unwarranted violence”. However, after balancing the aggravating and mitigating factors, the Court of Appeal felt that the custodial sentence of 5 years imposed by the judge was unnecessarily high and reduced the sentence to 4 years.

[47.] Mr. Pilgrim urged the Court to take into account, as a mitigating factor the fact that you harboured a sense of injustice towards the deceased, in that you felt bullied by the deceased and unfaired by him. He urged the Court to take into account, what he termed, a history of violence against you by the deceased, Michael Albert.

[48.] While acknowledging that the question of an appropriate sentence was ultimately one for the Court, Mr. Pilgrim urged the Court to be lenient with you and suggested that time already spent on remand might be the sentence of the Court.

[49.] For his part, Mr. Watts who appeared for the Crown, agreed with Mr. Pilgrim that an appropriate sentence was to be found within guideline 4 of *Pierre Lorde* Guidelines. He submitted a sentence below 8 years would be appropriate after discount for the guilty plea was given. He further indicated that he would have no difficulty with Mr. Pilgrim’s submission that a sentence of time spent would be appropriate in this case.

[50.] Having regard to your early guilty plea and keeping Guideline 4 of *Pierre Lorde* firmly at the forefront of its mind, the Court was cognizant that the suggested range of sentence where there is a contested trial and where no intrinsically dangerous weapon is used and there mitigating features is 8 to 12 years while the Court of Appeal has suggested that a sentence of 8 years or less is appropriate where an early plea of guilty has been entered.

[51.] Ultimately, having regard to all the circumstances and in particular to the fact of your early guilty plea, this Court, in the exercise of its sentencing discretion and bearing the *Pierre Lorde* manslaughter guidelines firmly in mind, established a starting point of 6 years for determining the length of your sentence.

[52.] Length of the Custodial Sentence- Section 36: Having considered the gravity of the offence and established the appropriate starting point for determining your sentence, the Court was mindful of the general judicial guidelines set forth in section 41(2) of the Act, which require, *inter alia*, that the gravity of the punishment must be commensurate with the gravity of the offence. The Court next turned to section 36 of the Penal System Reform Act and considered the issue of proportionality with a view to determining what length of sentence would be appropriate to do justice in this case.

[53] 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 early 2012 and you appear to have entered a guilty plea at the earliest opportunity avoiding a lengthy trial and I have applied a discount of 2 years from the starting point]

ii. Your relatively young age; [N.B. You were 28 years at the time of the incident and are approaching your 30<sup>th</sup> year.]

iii. Your very favourable Pre-Sentence Report which reveals that you are at a low risk of further offending and pose a low risk of harm to the public;

iv. The regret which you have publicly expressed and your current attitude to the offence as disclosed in the Pre-Sentence report in which you expressed regret for the situation which led to your brother's death;

v. The strong plea in mitigation made on your behalf by Defence Counsel, Mr. Pilgrim, QC, together with evidence of your character

witnesses who have all described you as a timid, docile person with no pre-disposition for violence and a person who avoids confrontation and are as George Mendes puts it “an honest and hardworking man”;

vi. Finally, I have, following the approach of the English Court of Appeal in *Harty’s case*, also taken into account as a mitigating factor, the fact that as long as you live, you will carry with you the knowledge that your actions contributed to the death of your own brother.

[54] **Time spent on Remand:** According to Prison Officer Bentley Boucher, as at 10<sup>th</sup> December, 2013 you have spent a total of 683 days on remand. To this period the Court had added the 105 additional days which have elapsed since 10<sup>th</sup> December, 2013 up to today’s date.

[55.] In keeping with the CCJ decision in **Romeo Hall**, you will be given full credit for the now 788 days [or 2 years and 58 days] you have spent on remand to date awaiting the final disposition of this matter.

[56.] **Order of the Court: Greville Rowlando Headley**, you are hereby sentenced to a term of imprisonment of **3 years** for this offence.

[57.] From this sentence and in keeping with the CCJ decision in **Romeo Hall**, you will be credited with the full period of 788 days [or 2 years 58 days] which you have to date spent on remand in this matter. In the result, you will only be required to serve the remaining period of 307 days in custody for this offence.

[58.] Your sentence is, however, suspended for a period of 12 months from today’s date, which shall be the “operational period” for purposes of section 6 of the *Penal System Reform Act*.

[59.] ***Greville Rowlando Headley***, the sentence which this Court has just passed is a suspended sentence. In accordance with section 6(6) of the *Penal System Reform Act*, I am required to explain to you that, should you commit a subsequent offence in Barbados during the “operational period” of 12 months, you will be liable to be brought back to Court and to be dealt with in accordance with section 7 of the Act.

Do you understand what the Court has just explained to you?

[60.] This is the order of the Court.

**Maureen Crane-Scott**  
**Judge of the High Court**  
**2014-03-25**