

Barbados

Indictment No: 120 of 2012

**The Queen vs. Junior Christopher Worrell**

SENTENCING JUDGMENT

***Junior Christopher Worrell,***

[1] **Background:** On Wednesday, July 24<sup>th</sup>, 2013, a jury found you “not guilty” of murdering Abdulhai Ismail Patel, but convicted you instead of manslaughter.

[2] **Your Criminal Record:** Following your conviction the Court was informed that you have 6 previous convictions. The Court was told that on the 20<sup>th</sup> January 1999 you were convicted for the offence of unlawfully assaulting Ricardo Licorish, while on the 22<sup>nd</sup> February 1999 you were convicted for the theft of seven (7) pants belonging to Roger Hill.

[3] On the 14<sup>th</sup> November 2000 you were convicted for the offence of aggravated burglary while on the 20<sup>th</sup> February 2003 you were convicted for unlawfully and maliciously wounding Owen Griffith. Finally, on the 4<sup>th</sup> August 2010 you were convicted for the offence of possession of cannabis.

[4] While this is your first conviction for manslaughter, it is clear, based on your record, that this is not your first offence involving violence under the ***Offences Against the Person Act, Cap. 141.***

[5] **The Case for the Prosecution:** The Case for the Crown at the trial was that on Sunday, the 28<sup>th</sup> day of November 2010, the deceased man, a 61 year old itinerant salesman, left his residence in Country Road, St. Michael in the company of his assistant in a van to do some business.

[6] While in the area of Grand View Road, St. Patricks, in Christ Church the deceased man parked his van along Grand View Road while his assistant went to a nearby house to transact business. On the van assistant’s return to the van and just as he was about to close the front passenger door, you and another man, “A” appeared at the van window where “A” demanded money.

[7] As the deceased started the van to drive off, “A” pulled out the gun which he had in his possession, put his hand into the van and pointed the gun at the deceased man. According to you, the deceased held onto “A’s” hand after which a shot went off, striking the deceased in his upper left-side chest.

[8] The Crown’s case at the trial was founded on the doctrine of joint enterprise. The Crown’s case was that you participated in a joint enterprise with “A” (who was not before the Court) to commit robbery. The Crown’s case also was that you participated in the robbery knowing that “A” was armed with a gun and further that you foresaw or realized that there was a real possibility that “A” would use the gun if necessary in furtherance of the robbery, with the specific intent to kill or at the very least cause grievous bodily harm to someone.

[9] To establish guilt, the Crown relied on oral admissions attributed to you during the police investigations, in which you admitted, *inter alia*, being present with "A" but insisted that you had not killed anyone and that it was "A" who had shot, not you.

[10] The Crown also relied on a written confession statement which police witnesses stated that you dictated to them in which you allegedly told the police, *inter alia*, that "A" had shown you a gun and asked you to accompany him to stick up somebody in search of money. You told police that you had agreed to go with "A" and that whilst driving along a road you were not familiar with, "A" had shown you a van parked on the road with an Indian man sitting in it.

[11] In the statement, you allegedly also told police that whilst you were standing behind "A" at the van window, "A" had asked the van assistant for money and that the Indian man had started the van and "A" had pulled out a gun, put his hand in the van and jucked it at the Indian man. According to you, the Indian man had held onto "A"s hand and you had heard a shot.

[12] According to your statement also, you and "A" had then run back to the rented car you had been travelling in to make good your escape. You also told police that you had advised "A" to carry back the car since you didn't know who had seen you and had also told him not to panic because you both knew *"...that once [you] doing this type of work somebody may get hurt."*

[13] The Crown also relied on the testimony of a witness, Anthony Pilgrim, who told the Court that while driving down Grand View Road with his family very shortly after the shooting, he decided to turn off Grand View Road and into nearby side street. He then said that he had immediately observed 2 suspicious men (one covering his face) hurriedly entering a white Toyota Tercel car which had been parked in Dolphin Park close to Grand View Road.

[14] His suspicions aroused, the civic-minded Anthony Pilgrim then followed the car with the 2 men which mounted a sidewalk to join the new St. Patrick's Road. Driving quickly, the witness said he was able to catch up with the car in the area of the St. Patrick's round-a-bout where he was able to take down the registration number of the car, MF-269 which he immediately reported to the Boarded Hall Police Station.

[15] The Crown also relied on the evidence of the owner of MF-269, Wayne Denny who told the Court that he had rented the vehicle to 2 men on the understanding that the vehicle, a white Tercel motor car, would have been returned between 7 and 7:30 pm on Sunday evening but that the vehicle had not been returned on time.

[16] Wayne Denny also told the Court that as the vehicle was not returned on time, he had called "A" and the vehicle had been returned to him an hour, or a little less than an hour, later. He told the Court that when the car was returned to his residence, "A" had been in the company of another guy who he had seen before.

[17] Wayne Denny told the Court that he had seen "A" and the other man about 4 times between the time when he rented the vehicle and the time when he went to the police station. Those occasions had been firstly, on Saturday night when the men had come about the car, secondly when he saw them in Small Land near his residence about an hour before they returned the car, thirdly, when they returned the car and finally, at the police station.

[18] In the absence of direct eye-witness testimony placing you at the scene of the shooting, the Crown's case was also based on your oral admissions, the alleged written confession statement admitting your involvement coupled with circumstantial evidence arising out of the testimony of Anthony Pilgrim and Wayne Denny which placed 2 men inside the white Toyota Tercel motor car seen in the vicinity of Grand View Road on the night of the shooting.

[19] **The Case for the Defence:** The case for the Defence, as disclosed in your unsworn evidence from the dock, was that on the 27<sup>th</sup> November, 2010 you left your residence at Mahaica Gap, Green Hill, St. Michael to attend a football game at 4.30. According to you, after football there was an after party and you left about 12.00 to go to your residence. You told the Court that on the 28<sup>th</sup> November, 2010 you had no conversation with "A". You never got into a motor vehicle with "A" from Green Hill, St. Michael. Also, "A" never showed you a gun or told you to come rob someone with him. You never entered St. Patrick's with "A" and you were never there.

[20] During the trial, you also denied making any of the oral statements or dictating the written confession statement to the police as alleged.

[21] **Basis of jury's verdict and Court's findings for sentencing purposes:** Given the state of the evidence and the respective cases for the prosecution and the defence at the trial, the issues of alibi, accident and the possibility of manslaughter were all left for the jury's consideration.

[22] In considering the seriousness of the offence for sentencing purposes, this Court is satisfied and accepts that in returning its manslaughter verdict in this case, the jury very clearly rejected your alibi defence and was evidently satisfied that you were in fact present with "A" at Grand View Road in pursuance of a joint venture to commit robbery.

[23] The Court is further satisfied that in returning its manslaughter verdict, the jury found that while you participated in the unlawful joint venture and contemplated that someone might get hurt in the course of the robbery as a result of "A"'s unlawful and dangerous act, you did not foresee or intend that "A" would kill Abdulhai Patel or do him any serious bodily harm.

[24] **The Pre-Sentence Report:** As requested by Defence Counsel, Mr. Gordon and for purposes of the *Penal System Reform Act, Cap. 139*, a Pre-sentence Report was obtained and was read into evidence by Probation Officer, Miss. Roseann Knight on the 19<sup>th</sup> September, 2013 and has been reviewed by the Court.

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

[26] The Court has noted that during your early childhood was marked by what the Probation officer described as "impoverished living conditions and social deprivation". You started using marijuana at age 15 and admit that you habitually use the drug but feel that you are not addicted to the substance which according to you keeps you "cool and humble".

[27] You showed no interest for formal education and left school at age 15 years. After leaving school

you worked as a coconut vendor and as a labourer, performing tasks like sanding furniture, debushing, tree-trimming and similar unskilled work.

[28] The section of the report dealing with your current attitude to the offence shows that you have accepted no culpability for the offence and have not surprisingly, expressed no remorse for the offence.

[29] Based on her assessment of the key indicators of risk discussed in your report, the Probation officer categorized you as having a high risk of re-offending.

[30] **Observations:** 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*.

[31] **Reasons for imposing Custodial Sentence - Section 35(4):** As required by section 35(4) of the *Penal System Reform Act* and after considering the evidence adduced at the trial in relation to your role in this offence, together with the Pre-sentence Report 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 in this case for the following reasons.

[32] The Court determined the seriousness of the manslaughter offence in this case having regard to the following factors:

- a) While the jury's verdict clearly indicates that you and "A" (the other party to the unlawful enterprise) did not have the specific intent to kill or cause serious bodily harm to Abdulhai Patel, and accordingly, his unlawful killing was not planned or pre-meditated, the joint enterprise to commit robbery was both planned and pre-meditated. In this regard, the facts clearly establish that a car was hired by "A" and you both embarked on your unlawful joint venture to rob, armed in advance with a firearm carried by "A";
- b) In pursuance of your unlawful joint enterprise to "*stick up somebody to get money*", a firearm was in fact used and Abdulhai Patel died from a gunshot injury caused by the gun used;
- c) While you were not armed with the firearm and were not the person who jucked the gun at the deceased man, on the principle of joint enterprise, you are equally culpable for his death as "A" - the man who was holding the gun. Furthermore, both by your presence at the scene of the shooting and your active participation before as well as after the shooting, you lent your full support to the unlawful and dangerous joint enterprise which caused the victim's death.

[33] The Court is satisfied that this was a serious case of manslaughter high up on the manslaughter scale and close to the borderline of murder with numerous aggravating factors and no mitigating factors in relation to the offence.

[34] In short, this was a case where an unarmed and defenseless man who was simply going about his lawful and honest business as an itinerant salesman along the roads of this country, met his untimely

death at the hands of 2 armed hoodlums bent on robbing him of his hard-earned cash.

[35] Ultimately, the Court was satisfied that the seriousness of the offence took it beyond the threshold for non-custodial punishment and into the realm of custodial punishment.

[36] The Court adverted 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.

[37] However, as is clear from the manslaughter guidelines established by the Barbados Court of Appeal in ***Pierre Lorde (Criminal Appeal No: 11 of 2003, unreported decision of 24<sup>th</sup> February, 2006)***, the statutory penalty of imprisonment for life is to be reserved only for the most serious manslaughter offences.

[38] The Court is also aware having regard to the Barbados Court of Appeal decision in ***Oral Andy Devine Cummins (Criminal Appeal No: 56 of 1995, unreported decision of 13<sup>th</sup> July, 2004)*** that where a life sentence is to be imposed, 3 criteria for the imposition of life sentences must also be satisfied. [See ***Hodgson (1967)***, ***Dempster (1987)*** and ***Chapman (2000)***. Also see ***Oral Andy Devine Cummins (cited above)*** where ***Hodgson*** was applied.]

[39] It was not difficult for the Court to find that although someone died as a result of your actions, the imposition of a life sentence in this case is completely out of the question since there is no evidence that you pose a danger to the public and life imprisonment as a punishment would be completely disproportionate to the gravity of this particular offence.

[40] In issuing its manslaughter guidelines in ***Pierre Lorde***, in 2006, the Barbados Court of Appeal stressed that its 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 the 2011 Barbados Court of Appeal decision of ***Curtis Joel Foster, (DPP’s Reference No 1 of 2010, unreported decision of 11 February, 2011)*** ***Peter Williams JA*** 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 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] Against the foregoing background, I am therefore 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*.

[43] During the course of his mitigation on October 3<sup>rd</sup>, 2013, Defence Counsel, Mr. Gordon submitted, *inter alia*, that the facts and circumstances of this offence fall outside the 4 ***Pierre Lorde*** guidelines. He urged the Court, in accordance with paragraph 36, to treat the case as one of the odd cases, envisaged in paragraph 36, whose special or exceptional facts fell outside the guidelines.

[44] He suggested that because you played a lesser role in the offence, you should be given a sentence which was below the one received by “A” who, he said was sentenced to imprisonment for 16 years.

[45] In his reply, the learned Crown prosecutor, Mr. Watts disagreed with Mr. Gordon's suggestion that the case fell outside the Pierre Lorde guidelines. After discussing the aggravating and mitigating factors, Mr. Watts urged the Court to consider a starting point of 22 years and to make the appropriate reductions in sentence taking into account the relevant mitigating factors.

[46] After considering the matter, the Court was satisfied that the facts and circumstances of the offence place it high up on the manslaughter scale and close to the borderline of murder. Having regard to the seriousness of the offence and taking the foregoing guidelines and factors into account, the Court, in the exercise of its sentencing discretion, selected 23 years (a point between Guideline 1 and 2) as the appropriate *starting point* for determining your sentence.

[47] **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.

[48] Focusing next on you as the offender, apart from your relatively young age, (you are only 35 years) the Court was hard pressed to find any other mitigating factors of you as the offender which could have reduced the seriousness of the offence or which suggest a level of personal mitigation of you as the offender.

[49] In this regard, the Court did not consider that the fact that you did not actually shoot the deceased could be viewed as a mitigating factor which would reduce your culpability, since on the principle of joint enterprise, it was clearly part of the pre-arranged plan that "A" would carry the gun and that someone might be hurt in the process.

[50] In his mitigation, Defence Counsel, Mr. Gordon asked the Court to view as a mitigating circumstance of your role in the offence, an oral statement made by you when you confronted "A" at the police station following the shooting in which you told "A": *"What I tell you, I tell you to leave the Indian man but you ain't hear. You went through the people van window and shoot."*

[51] Mr. Gordon submitted that this particular oral is indicative of your having been present at the scene of the shooting, but not actively encouraging it. The Court is satisfied that in arriving at its verdict, the jury was clearly not persuaded that this particular oral was indicative of your having withdrawn from the unlawful enterprise. Nonetheless for sentencing purposes, I have therefore taken this particular oral statement into account as a mitigating factor in your favour as the offender and given you an appropriate discount.

[52] Having regard to what I have heard for the first time here today, when you told the Court for the

first time today that you were sorry for what happened, I have taken your last minute expression of remorse for your culpability in this matter into account in your sentence and given you an appropriate discount.

[53] **Time spent on Remand:** According to Prison Officer, Bentley Boucher, as at the 3<sup>rd</sup> October, 2013 you have spent a total of 1,035 days on remand awaiting the trial and final disposition of this matter. To this period the Court had added the additional 29 days which have elapsed since October 3<sup>rd</sup>, 2013 up to today's date.

[54] In keeping with the CCJ decision in **Romeo Hall**, you will be given full credit for the now 1064 days [i.e. 2 years 334 days] you have spent on remand to date awaiting your trial and the final disposition of this matter.

[55] **Order of the Court:** *Junior Christopher Worrell*, you are hereby sentenced to a term of imprisonment of **20 years** for this offence to commence with immediate effect. From this sentence and in keeping with the CCJ decision in **Romeo Hall**, there will be deducted, the full period of 1064 days [i.e. 2 years 334 days] which you have to date spent on remand since awaiting final resolution of the matter. In the result, you will be required to serve the additional **17 years 31 days** in custody for this offence.

[56] During your incarceration, and with the aim of your rehabilitation, you will undergo a psychological assessment and undergo such psychological interventions, counseling and programs as may be recommended by the Prison Psychologist.

[57] During your incarceration also, you are strongly advised to enroll in any available skills or vocational program which will enable you to acquire a skill or trade as this should enhance your ability to obtain gainful employment on your release from prison.

[58] The Superintendent of Prisons is directed to make the necessary administrative and logistical arrangements to ensure that the order of this Court is put into effect.

[59] This is the order of the Court.

Maureen Crane-Scott

Judge of the High Court

2013-11-01