

BARBADOS

[Unreported]

**IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL**

Criminal Appeal No.27 of 1996

BETWEEN:

ARLEIGH HECTOR JAMES

(Appellant)

AND

THE QUEEN

(Respondent)

Before: The Honourable Sir Denys Williams, Chief Justice, The Honourable Mr. Justice George Moe, The Honourable Mr. Justice Colin Williams, Justices of Appeal

2000: January, 17th, 24th & 28th.

2000: February, 4th.

Dr. Waldo W. Ramsay in association with Mr. A. Pilgrim for Appellant.

Mr. C. Leacock for Respondent.

DECISION

In this case an important point has arisen concerning the sentencing powers of the High Court when a person is found guilty of manslaughter on the ground of diminished responsibility.

The Offences against the Person Act

Section 4 (1), (6) and (7) of the Offences against the Person Act Cap. 141 enacts:-

"(1) Where a person kills or is party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind, whether arising from a condition of arrested or retarded development of mind or any inherent cause or induced by disease or injury, as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing ...

(6) Where on a trial for murder

(a) evidence is given that the accused was at the time of the alleged offence suffering from such abnormality of mind as is specified in subsection (1), and

(b) the accused is convicted of manslaughter,

the Court shall require the jury to declare whether the accused was so convicted by them on the ground of such abnormality of mind, and, if the jury declare that the conviction was on that ground, the court may instead of passing such sentence as is provided by law for that offence, order the person so convicted to be detained in custody, in such place as the court appoints, until Her Majesty's pleasure is known, and thereupon the Governor-General on behalf of Her Majesty may give such order for the safe custody of the person during Her Majesty's pleasure as the Governor-General thinks fit.

(7) The Governor-General acting in his discretion may by instrument in writing order the discharge, either absolutely or on such conditions as to the duration of the discharge or otherwise as he thinks fit, of a person ordered to be detained under subsection (6)".

Section 6 of the said Act provides that any person convicted of manslaughter is liable to be sentenced to imprisonment for life.

The provisions of section 4 of Cap. 141 reproduced above were first made part of the statute law of Barbados when the Offences against the Person Act 1868 was amended by Act No. 11 of 1973 to make provision for the defence of diminished responsibility on a charge of murder by the introduction of a new section 3A. The Act of 1868 was repealed by Act No. 18 of 1994 section 4 of which re-enacted in unaltered form the provisions relating to diminished responsibility that section 3A of the amending Act No. 11 of 1973 had incorporated in the 1868 Act.

The Mental Health Act

The Mental Health Act Cap. 45 came into operation on February 15, 1989 and section 13 enacted -

"13 (1) Notwithstanding section 7(1), where a person on trial before the High Court

(a) is found unfit to plead; or

(b) is found guilty but is suffering from insanity or diminished responsibility,

that court shall order him to be detained in a mental hospital until Her Majesty's pleasure is known and thereupon the Governor-General may give an order for the safe custody of that person during such detention.

(2) The Governor-General may by warrant either absolutely or conditionally

discharge any person detained under section (1)".

Section 7(1) enacted -

"7(1) Where in the opinion of a court, an accused person charged before it is, or appears to be suffering from mental disorder, the court may order that person to be admitted to a mental hospital for a period not exceeding 8 weeks".

Section 13(1) of the Mental Health Act Cap.45 was amended by Act No.24 of 1998 which came into operation on September 17, 1998 and substituted the following paragraphs for paragraph (b):

"(b) is found not guilty by reason of insanity, or

(c) is found guilty but is suffering from diminished responsibility,".

The Privy Council's Order

On July 25, 1996 the appellant Arleigh James was convicted before a judge and jury of the murder on May 23, 1994 of his wife and sentenced to death. On January 27, 1997 the Court of Appeal dismissed his appeal against conviction and on July 22, 1997 the Judicial Committee of the Privy Council granted him special leave to appeal. On February 9, 1999 at the conclusion of the hearing the Judicial Committee agreed to advise Her Majesty that the appeal ought to be allowed, the verdict of guilty of murder quashed and the sentence of death set aside. The Committee also advised that in substitution for the verdict of murder there should be a verdict of manslaughter on the ground of diminished responsibility and the question of sentence would be left for the Court of Appeal in the light of the substituted verdict and any up-to-date medical report which may be obtained. The matter was remitted to the Court of Appeal for this purpose.

The Arguments

The Director of Public Prosecutions submits that section 13(1) of the Mental Health Act is mandatory and requires the court to make an order for the appellant to be detained in the Psychiatric Hospital until her Majesty's pleasure is known.

Mr. Pilgrim for the appellant submits that section 4(6) is directory, the words "the court may" enabling the court to impose any punishment that the law permits on a conviction of a person for manslaughter.

In the view of this Court to hold that it is bound to order the detention of the appellant in the Psychiatric Hospital until Her Majesty's pleasure is known, would make the whole exercise which the Judicial Committee has imposed on this Court pointless. The Committee has left the question of sentence to be determined by this Court in the light of any up-to-date medical report that may be obtained. This action on the part of the Committee is inconsistent with the submission of the Crown and contemplates that this Court may, instead of making an order for detention until Her Majesty's pleasure is known, impose any punishment that the law allows on the conviction of a person for manslaughter.

Such a conclusion follows from the rule that one provision repeals another by implication if, but only if, it is so inconsistent with or repugnant to that other that the two are incapable of standing together. If incapable of standing together, the later laws abrogate prior contrary laws: "leges posteriores priores contrarias abrogant" see Halsbury, Laws, 4th Edition para 466.

In this case the amendment of the Offences against the Person Act that made provision for the defence of diminished responsibility came into operation with the enactment of the amending Act of 1973. Then came the mandatory provision of the Mental Health Act which came into operation on February 15, 1989 and there followed the Act of 1994 which was an Act to revise and amend the law with respect of offences against the person, which reinstated the directory provision in section 4(6) and which came into operation on September 1, 1994.

In this case the appellant was convicted of murder and sentenced to death on July 25, 1996 and the order of the Privy Council substituting the verdict of guilty of manslaughter on the ground of diminished responsibility would have effect from that date. By that date the directory provision of section 4(6) of the 1994 Act would have superseded the mandatory provision of the Mental Health Act.

The Director sought to argue that the amendment of section 13(1) of the Mental Health Act by Act No.24 of 1998 reinstated the mandatory provision requiring an order for detention until Her Majesty's pleasure is known on a conviction of a person for manslaughter on the ground of diminished responsibility. Two responses can be made to this submission: first, the 1998 amendment has nothing whatever to do with the issue whether the subsection is to be construed as mandatory or directory. The amendment merely recognised that the proper verdict on a finding by a jury of insanity is one of not guilty by reason of insanity and sought to have the subsection reflect the true position under the law; second, even if the 1998 amendment had sought to overrule the directory provision of section 4 (6) of the 1994 Act, it was not made retrospective and could not therefore have affected the present sentencing exercise.

The appropriate sentence

Dr. Ermine Bell, Senior Consultant Psychiatrist, saw the appellant on October 28, 1999. Her conclusion as stated in her report dated January 20, 2000 is as follows:-

"Mr. James interviewed well. He was realistic, rational and free of psychosis. His acts in 1994 came as a culmination following a period of intense stress, anxiety and depression. He had an admission to the Psychiatric Hospital in 1992 following the stress of being accused of sexually abusing his daughter which to the present he has denied. He had defaulted from follow-up at the Psychiatric Hospital after having been seen consistently over an eight month period. It was noted that for most of that period he was on no medication. Mr. James had not needed to be followed up in the prison clinic since 1997. He has since his imprisonment been seen at the Queen Elizabeth Hospital by Dr. Evelyn, a neurologist, for the complaint of epilepsy which he suffered from childhood.

Mr. James at present is mentally stable and is considered to be no risk to himself or to others. He is however considered someone who is vulnerable to stress. The act leading to his imprisonment appeared to have been impulsive and irrational. It is believed that he had developed new coping mechanisms which will help him to handle stress better in future.

He is an emotional person and therefore will suffer if he does not have a good support system to help him to cope in times of stress. He states that his family members remain supportive of him. Should he be given the chance to return to society, it is recommended that he be supervised until he has fully adjusted.

It is felt that he can be given a chance to reintegrate into society".

Dr. Belle in the body of her report says that the appellant now feels that getting into another relationship and living with another woman would be very hard to do. However the report states that he is family oriented and is an emotional person and this Court is of the view that the report, objectively assessed as a whole, does not support his feeling that he would find it hard to form another relationship with a woman.

Moreover the report shows that he was in the Psychiatric Hospital in 1992, that he was seen consistently over an eight month period after he left the hospital but that thereafter he defaulted from the follow up. Dr. Belle is of the opinion that he needs to have a good support system to help him to cope in times of stress. This court must ensure that he has a reliable support system.

Counsel for the appellant is seeking a determinate sentence on the ground that the experience in Barbados with orders for detention during Her Majesty's pleasure has not been good. It is said that nothing is heard of a detainee following the making of an order.

This Court is not aware of the unsatisfactory state of affairs of which counsel speaks and knows of nothing that would preclude a relative or friend of a detainee from seeking to monitor his or her detention. In the view of the Court the appropriate order in the circumstances of this case is for the appellant to be detained in custody at Glendairy Prison until Her Majesty's pleasure is known. One must assume that if and when the doctors become satisfied that the appellant can be released from custody without the need for a support system to help him cope in times of stress and without the public being exposed to danger, appropriate action will be taken by those in authority.

Chief Justice.

Justice of Appeal Justice of Appeal