Barbados

Indictment No: 36 of 2012

The Queen vs. Donovan George Barnes

SENTENCING JUDGMENT

Donovan George Barnes,

[1] **Background:** On Tuesday, October 2nd, 2012, a jury found you "not guilty" of murdering Raymond Hewitt, but convicted you instead of manslaughter.

[2] Following your conviction the Court was informed that you have no criminal record in Barbados and that this is your first known offence.

[3] **The Case for the Prosecution:** The Case for the Crown at the trial was that on the night of the 14th November, 2010, during the course of a domino game which was underway outside your residence in Denton Road, Grazettes, a difference of opinion arose between yourself and the deceased, Raymond Hewitt. The quarrel escalated into violence and during the ensuing scuffle, the deceased was fatally stabbed with a knife which you admitted you had been holding in your hand.

[4] The prosecution was unable to produce any eye-witnesses who could say that they saw you with a knife that fatal night or that they saw you delivering the fatal blow. In the absence of direct evidence, the Crown's case was largely founded on circumstantial evidence.

[5] One witness, Michelle Lashley, a neighbour who lived obliquely across the street, testified about having seen you making pushing motions at the deceased man who at the time had been against a wall, facing you and holding a chair up to his chest.

[6] Another witness, Crystal Wiggins, told the Court how the quarrel between yourself and the deceased had started, but she neither saw a knife in your hand, nor the fight itself as she had run into the house to escape the escalating violence.

[7] The Crown's case against you also consisted of the medical evidence of doctors and police testimony of oral and written statements allegedly made by you during the police investigations in which you told police that you had been holding a knife in your hand during the struggle, but did not know how the deceased was injured.

[8] **The Case for the Defence:** The case for the Defence, as disclosed in your unsworn evidence from the dock, was that you did not deliberately or intentionally inflict any wounds at all on the deceased man, Raymond Hewitt. While admitting that you had a knife in your hand with which you had been peeling a pear, you told the jury that you did not stab the deceased.

[9] You also told the jury that the deceased had been beating you with a metal chair and that you had raised your hands in the air to ward off his attack and did not know how he was injured and further, did not know if the knife *"catch him."*

[10] **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 accident, self-defence, provocation and manslaughter were all left for the jury's consideration.

[11] 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 was satisfied either that you were provoked into stabbing the deceased, or alternatively, that while you did not intend to kill or cause serious bodily harm to the deceased, you were nonetheless, doing a dangerous and unlawful act which all sober and reasonable people would have recognized would have subjected the deceased to at least the risk of some harm, albeit not serious harm.

[12] **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, Ms. Angela Dixon on December 10th, 2012 and has been reviewed by the Court.

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

[14] The section of the report dealing with your current attitude to the offence shows that you have expressed remorse for your actions. You also maintain that the events which transpired were an accident for which you are sorry.

[15] **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*.

[16] **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 the manner in which this offence was committed, 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.

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

a) The aggravating fact that someone died as a result of your actions and his death occurred during the course of a struggle, by an intrinsically dangerous weapon which you admitted was in your hand, viz, a knife;

b) The mitigating fact that immediately prior to the struggle, the evidence disclosed the possibility that you had been provoked by the deceased who both you and another witness said

had thrown a chair at you striking you in the chest;

c) The further mitigating fact that during the fight, as disclosed in your unsworn statement, you remained under continued threat of a vicious beating from the deceased with another metal chair;

d) Finally, the fact that the medical evidence clearly established that you had also received injuries consistent with having been involved in a struggle on the night in question.

[18] In summary, the Court is satisfied that this was a serious case of manslaughter where several mitigating factors of the offence outweighed the single aggravating factor disclosed on the evidence, namely, the fact that the deceased died from a stab wound inflicted by an intrinsically dangerous weapon.

[19] Despite the many mitigating factors, the Court was satisfied that your conduct as the offender took the offence beyond the threshold for non-custodial punishment and into the realm of custodial punishment.

[20] 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.

[21] 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 24th February, 2006),*** the statutory penalty of imprisonment for life is to be reserved only for the most serious manslaughter offences.

[22] 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 13th 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.]

[23] 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 as a punishment it would be completely disproportionate to the gravity of this particular offence.

[24] 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."*

[25] 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.

[26] 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.*

[27] During the course of his mitigation and legal submissions on sentence on December 10th, 2012, Defence Counsel, Mr. Gordon submitted that the facts of the case did not, in his opinion, sit easily within any of the 4 ***Pierre Lorde*** guidelines. He noted that the facts disclosed that the deceased's death may well have been accidental and to that extent, the case fell outside the ***Pierre Lorde*** guidelines.

[28] He also urged the Court to find that the issues of self-defence and accident which were raised at the trial created the exceptional circumstances which would justify the Court treating the case outside the ***Pierre Lorde*** guidelines.

[29] Mr. Gordon suggested that a sentence of 3 to 4 years (inclusive of the 2 years spent on remand) would be appropriate to do justice in the case and cited the case of ***Kemal Blades*** where a sentence of 4 years was imposed.

[30] In his reply, the learned Crown prosecutor, Mr. Alliston Seale conceded that the jury's verdict was consistent with their having found that you did not have the intention to kill or do serious bodily harm to the deceased.

[31] Mr. Seale submitted that in his opinion, having regard to the manner in which the ***Pierre Lorde*** guidelines are worded, the case did not fall squarely in either guideline 3 or 4 since this was a contested case where there were mitigating circumstances and where an intrinsically dangerous weapon other than a firearm was used.

[32] He suggested that following the guidelines, the Court was left with a starting point in a range of somewhere between 8 to 12 years. He submitted that there was no question of a discount for a guilty plea, as the case had been contested and urged the Court to balance the aggravating and mitigating factors and credit you with the time spent on remand in arriving at an appropriate sentence.

[33] After considering the matter, the Court found that as this was a contested trial where there were several mitigating features and where an intrinsically dangerous weapon other than a firearm was used, the appropriate range of sentence was somewhere between 8 to 14 years.

[34] 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, has selected 10 years as the appropriate starting point for determining your sentence.

[35] **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.

[36] 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. The strong plea in mitigation made on your behalf by Defence Counsel, Mr. Gordon who stressed that the facts clearly established that the killing was a fortuitous and unplanned event; and

ii. The genuine remorse which you have expressed for the incident.

[37] **Time spent on Remand:** According to Prison Officer Bentley Boucher, as at December 10th, 2012 you have spent a total of 754 days on remand awaiting the trial and final disposition of this matter. To this period the Court had added the additional 76 days which have elapsed since December 10th, 2012 up to today's date.

[38] In keeping with the CCJ decision in **Romeo Hall**, you will be given full credit for the now 830 days [i.e. 2 years 100 days] you have spent on remand to date awaiting your trial and the final disposition of this matter.

[39] **Order of the Court:**, ***Donovan George Barnes,*** you are hereby sentenced to a term of imprisonment of **8 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 830 days [i.e. 2 years 100 days] which you have to date spent on remand since November 18th, 2010 awaiting final resolution of the matter. In the result, you will be required to serve the additional 5 years 265 days in custody for this offence.

[40] This is the order of the Court.

Maureen Crane-Scott

Judge of the High Court

2013-02-26