

## BARBADOS

*Indictment No: 0053 of 2010*

### THE QUEEN V. CRAIGG PRESCOTT

#### SENTENCING JUDGMENT

*Craig Prescott,*

- [1] **Background:** On Wednesday, September 25<sup>th</sup>, 2013 you were arraigned and pleaded “not guilty” to murdering Junior Harris, but “guilty” instead to manslaughter.
- [2] **The Outline of Facts:** Following your plea, the learned Director of Public Prosecutions, Mr. Charles Leacock, Q.C. outlined the facts and circumstances surrounding the manner in which Junior Harris died as a result of a gunshot injury to the chest unlawfully inflicted by you on the afternoon of October 21<sup>st</sup>, 2003.
- [3] The Court was informed that you and the deceased man were boyhood friends and had known each other growing up together in the Sargeant Village, Bartlett’s Tenantry area of Christ Church.
- [4] On the afternoon in question, the deceased was in the company of a group of men who had been playing a game of Backgammon in the roadway in Harper’s Village, Sargeant’s Village, when a dispute arose during which several gunshots were discharged by you at the deceased. An eye witness, Cedric Lovell who had known you for over 15 years, saw you in front of the deceased with a brown object in your hand.
- [5] The deceased man fell to the ground and on his being examined at the scene by Dr. Andrew Murray just after 8:00pm, he was pronounced dead at the scene.
- [6] The police were summoned and investigations commenced. Crime scene photographs were taken and a number of items, including cartridges were recovered from the scene.
- [7] The deceased’s body was taken to the Queen Elizabeth Hospital where it was identified to police by his aunt, Gloria Harris, the following day. Pathologist, Dr. Stephen Jones also performed an autopsy on the 22<sup>nd</sup> October, 2003 and attributed the cause of death to gunshot injury to the chest with haemorrhage and shock.
- [8] The Court was informed that you fled the jurisdiction and that a warrant was issued for your arrest on November 1<sup>st</sup>, 2003. The warrant was executed almost 5 years later on January 26<sup>th</sup>, 2008

when police travelled to St. Vincent and saw you in the custody of the police authorities in that island. You were duly arrested and brought you back to Barbados in police custody.

[9] On your return to Barbados, you were informed of your rights and cautioned and during the police interview on January 26<sup>th</sup>, 2008, you gave police a self-penned written statement explaining the circumstances in which you had shot the deceased on October 21<sup>st</sup>, 2003.

[10] You told police that on October 21<sup>st</sup>, 2003 at around 10 minutes to 7:00 in the morning, you had been at home with your 2 girl children preparing them for school. After you had finished with them, you went to Harper's Land as usual to take your baby son for a walk.

[11] On arrival there, you saw the deceased, who you called "Bounty Killer", who, you said, had been "acting up". The deceased told you that you and your family had him unable to sleep because you all had the police running him all over the place. You told police that the accused had then threatened to kill out all of you Prescotts.

[12] According to you, you did not respond but had continued walking towards your son's house. "Bounty Killer" had then run up to you, locked off your neck and started to beat you up. He burst your mouth, "*swell up your eye*" and kicked you all over your body. You told police that a lot of people were around because it was around 7 o'clock and men limed out there before going to work. You asked for help but no one helped you.

[13] According to your statement, "Bounty Killer" then told you he was going for his gun and he was going to shoot you because you were "*either going jail with him or he killing you.*" You told police that after he let you go, you had run because you did not want him to kill you and you had hidden behind your house the whole day.

[14] Your son's mother called you later that day and asked you for pampers for your son and you had "*eased out there to give her some money...about 5 o'clock.*" Whilst you were behind her paling, you heard police and saw "Bounty" put a black thing that you knew was a gun in the fence and walk away.

[15] According to you, you eased out and tried to pick it up and to run with it, but the deceased saw you and started to come at you "*so [you] started to run and [you] just point it at he but he [was] still coming so [you] ran and pull and [you] heard a shot and he was still coming and [you] pull again and it drop and [you] got away from him.*"

[16] You explained that when you pointed the gun at him and pulled the trigger, you didn't know if he got hit and that you became afraid and dropped the gun and kept running. You went down Bay Street, got on a boat and went to St. Vincent. According to you, you left because his family was

looking for you to kill you.

- [17] **Basis on which the plea was accepted:** The learned Director of Public Prosecutions, explained the basis for his acceptance of the manslaughter plea as offered in the following terms:

*“...there is clear evidence on the depositions that there was some element of bad blood between the two men and maybe between their families for reasons known to them. But on the day in question when he shot him, there seemed to have been some confrontation between them, and in those circumstances I thought it was prudent...that provocation...would be a salient factor in the outcome...We cannot dispute that he didn't flee the man. He did hide, he took evasive action and in the circumstances when he was confronted he shot him...there is clearly a basis, on the evidence, that he was provoked in the circumstances, and it is for that reason that I should consider the issue of provocation and I have so acted on it.”*

- [18] The facts as outlined by the learned Director of Public Prosecutions, together with the basis of the plea were accepted on your behalf by Defence Counsel, Mr. Pilgrim, Q.C. and have also been accepted by the Court for sentencing purposes.

- [19] **Your Criminal Antecedents:** On Friday, 28<sup>th</sup> February, 2014, Sergeant of Police, Tyrone Leacock of the Criminal Records Office advised the Court that you have 8 previous convictions, 4 for robbery, 1 for theft and 3 for possession, trafficking and possession with intent to supply a controlled drug, namely, cocaine.

- [20] **Your Pre-Sentence Report:** As required by the *Penal System Reform Act, Cap. 139*, this Court ordered the preparation of a Pre-Sentence Report. The Report was prepared by Probation Officer, Mr. Louis Linton and read into evidence on Tuesday, 10<sup>th</sup>, December, 2013.

- [21] The Court has carefully reviewed the Report which provides valuable insight into your family, educational and social background, as well as your employment history and your current attitude to the offence. The Report also contains a brief Victim Impact Statement from the mother of the deceased. Mrs. Frederika Harris.

- [22] The Report revealed that you attended the Princess Margaret Secondary School where you remained until age 16 and that you obtained Barbados Secondary School Certificates in Mathematics and English.

- [23] It also disclosed that, prior to your remand, you resided with your partner, Ms. Debra Small and your two children.

- [24] The Court notes that, according to the Report, you were raised in a close-knit and supportive family environment where values were instilled.

- [25] The Report further disclosed that your sister, Jianne Prescott, described you as a jovial and helpful man who has a good relationship with his siblings. She also described you as “*a non-violent person who has a good rapport with community members*”. Moreover, she said, your family was aware of your drug usage but insisted that, since you are an adult, you should be cognizant of the consequences of that habit.
- [26] Two residents from your community spoke to your general nature. Ryan Ifill stated that he knew you since childhood and described you as “*cool*” and one who gets on well within the neighbourhood. He further described you as “*non-aggressive*” and characterized you as a “*peacemaker*”. Michelle Price described you as pleasant, helpful, non-violent and stated that you were respected within your community.
- [27] Other unnamed members of your community described you as quiet. However, they questioned your choice of associates and, as a result of those associates, the incident came as no surprise to them. They mentioned conflicts and arguments within neighbourhood groups as reasons of concern.
- [28] Your girlfriend, Debra Small, characterized you as a pleasant individual and an excellent father who was interested in the welfare of his children. She too described you as non-violent person who liked to stay away from confrontations. She was aware of your drug use, but was of the view that it was not excessive.
- [29] You admitted to the Probation Officer and appear to have recognized that your abuse of illegal substances and negative associates in your early twenties had resulted in your having come into conflict with the law and to your being incarcerated.
- [30] You also admitted that, as a result of the incident, you fled to St. Vincent and took up residence there for a period of four and a half years before you turned yourself into police custody. You did this, you said, because “*the incident played on [your] mind*”.
- [31] The Report disclosed that your time on remand, which commenced in January 2008, has been a learning experience. You have indicated your intention of changing your lifestyle, choosing your friends more carefully and establishing a painting business. You informed the Probation Officer that you are a “trustee” on the “H” Block of Her Majesty’s Prison Dodds and that your duties include assisting prison warders with administrative work. You stated that that position has allowed you to focus in a positive direction.
- [32] Your artwork has received awards at the National Independence Festival of Creative Arts (NIFCA) 2013. You described that achievement as a source of inspiration and have indicated that it is your desire to become a professional artist upon your release.
- [33] As to your attitude towards this offence, the Report reveals that you have expressed remorse for

your actions. You stated that the incident should not have happened since you, and the victim were good friends. You described the incident as devastating, because it curtailed your commitment to your children.

[34] A victim impact statement was taken from the victim's mother Mrs. Frederika Harris. She reported that the incident has not impacted negatively on her family and described the incident as unfortunate as she was aware of the relationship between you and the deceased. She maintained that you are a family friend and that there is no animosity. Furthermore, she reported that she visits you at Her Majesty's Prison Dodds regularly.

[35] **Discussion:** The Court is keenly aware that the offence of manslaughter for which you are to be sentenced, is one which can vary enormously in severity from case to case, and may range from near murder at one extreme to almost an accident on the other.

[36] The Court must now determine 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*.

[37] *Reasons for imposing Custodial Sentences - Section 35(4)*: 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, 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 for the reasons which now follow.

[38] In determining offence seriousness in this case the Court adverted to the ***Suratan*** 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***.

[39] I have taken into account that since this is a case in which 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.

[40] *Assumptions:* Applying the ***Suratan*** guidelines, the Court has firstly assumed that, the seriousness of this offence has been mitigated by the fact that at the time of the killing, you lost your self control.

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

i.) I have accepted the fact that on the day you shot the deceased, you had had an

earlier altercation with him and that he had been “acting up” and had accused you and your family of having the police running him all over the place and had threatened to kill out all of you Prescotts;

ii.) I have also accepted the fact that the deceased had run up to you, locked off your neck and started to beat you up. He had also burst your mouth, “*swell up [your] eye*” and kicked you all about your body;

iii.) I have further accepted the fact that the deceased had told you that he was going for his gun to shoot you because you “*either going jail with him or he killing you;*”

iv.) I have accepted that you were fearful and that you ran from the deceased and hid behind your house the whole day and only ventured out around 5 o’clock to give your son’s mother money for pampers;

v.) I have accepted that whilst you were behind your child mother’s paling, you heard police and saw “Bounty” put a black thing that you knew was a gun in the fence and walk away;

vi.) I have also accepted that as you eased out and tried to pick up the deceased’s gun and to run with it, he saw you and started to come at you;

vii.) Finally, I have accepted that you started to run and that you pointed the gun at him, but that as he was still coming at you, you ran and pulled the trigger and heard a shot. I have also accepted that the deceased was still coming and you pulled the trigger a second time and the gun dropped and you got away from him.

[42] 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.

[43] 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.

[44] While the Court is satisfied that the offence was mitigated by the fact that your actions were spontaneous and were neither planned nor premeditated, the Court nevertheless found that the offence was aggravated by the following factors:

a) The fact that a firearm was used in the commission of the offence;

- b) The fact that since you had picked up the deceased man's firearm from the fence where you had just seen him stash it, the deceased was unarmed;
- c) Even if, as you say, the deceased had seen you take up the gun from the fence where he had just stashed it and had started coming after you, the force you ultimately used against him, firing 2 shots in those circumstances was excessive;
- d) The fact that you fled to St. Vincent immediately after the commission of the offence and remained there for some four and a half years before finally giving yourself up to police custody.

[45] In determining offence seriousness in your case, I have also borne in mind the manslaughter guidelines established by the Barbados Court of Appeal in the case of ***Pierre Lorde v. The Queen (2006) 73 WIR 28***. I am satisfied that the 4 guidelines set out in ***Pierre Lorde*** should be viewed on a sliding scale of 1 to 4, with 1 being reserved for the most serious offences and 4 for the least serious.

[46] I am accordingly 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*.

[47] In his mitigation on your behalf, Mr. Pilgrim, Q.C. urged the Court to take into account in your sentencing, the fact that the very lengthy time you have spent on remand has stood you in good stead. He reminded the Court that as the Pre-Sentence Report shows, you have used the time wisely and have been equipping yourself with the knowledge and skills which will enable you to be both functional and employable in society upon your release.

[48] He highlighted the fact that whilst on remand, you had reached out to the deceased man's mother, Mrs. Frederika Harris and had apologized to her for killing her son. You have since developed a friendship with her, so much so that she has taken an interest in the welfare of your 3 children whom she views as her grandchildren. The deceased's mother continues to visit you at the prison and has indicated her willingness to assist in your reintegration upon your release.

[49] Mr. Pilgrim highlighted the various courses in which you have been enrolled whilst on remand and the accolades and awards you have received as a consequence. He also referred to your award-winning artwork and your duties as a "trustee" within the prison as evidence of the extent of your rehabilitation process.

[50] Mr. Pilgrim also asked the Court to consider that you have done all in your power to rehabilitate

yourself as far as relates to your drug abuse and anger management issues. He pointed out that having recognized challenges in relation to both these matters, you had deliberately pursued drug rehabilitation and anger management courses whilst on remand.

[51] With reference to the ***Pierre Lorde*** guidelines, Mr. Pilgrim acknowledged that, based on the involvement of a firearm and the presence of mitigating factors, the range of sentence for this offence should ordinarily fall within guideline 2.

[52] He asked the Court to find that notwithstanding guideline 2, due to your early guilty plea, your favourable Pre-Sentence Report and your unique circumstances as a reformed offender, a sentence below 14 years would be appropriate.

[53] Further developing his argument, Mr. Pilgrim referred to para 36 of ***Pierre Lorde***, and urged the Court to consider that the facts of your case are unique in several aspects. In this regard, he referenced your well-spent time in prison and the support you have received from the victim's family. These, he said, were "special or exceptional" facts which, in his opinion, make you a unique offender and bring your case outside the ambit of the ***Pierre Lorde*** guidelines.

[54] As an alternative Mr. Pilgrim suggested with, in this Court's view, somewhat of a stretch, that the Court could view this case as one falling within guideline 4. He argued that based on your statement this was a case where the facts showed that the offence was spontaneous in that either of two men could have gotten to the firearm first, and that in such circumstances, the Court could conclude that the critical issue was not the use of the firearm.

[55] While acknowledging that the question of an appropriate sentence was ultimately one for the Court, Mr. Pilgrim queried whether your punishment warranted time beyond the 6 years you have spent on remand and submitted that the time you have to date spent on remand should be the sentence of this Court.

[56] Mr. Watts, who appeared for the Crown, submitted that whilst Mr. Pilgrim's arguments were thought provoking, based on the current state of the law, this Court was not the correct forum in which such arguments should be raised. He submitted that the Court has no power to award you a reduction in sentence for what may be characterized as good behaviour whilst on remand. Such a power, he argued, could only be available to a Court after legislative reform.

[57] Mr. Watts however conceded that the Court could not, based on your constructive use of your prison time, avoid viewing you as a somewhat reformed individual. However, he contended that whilst the Court might give you credit for your reformed state, it ought not to use its sentencing discretion to give you full credit for that reformation and thereby bring about your early release.

[58] According to Mr. Watts, this matter fell to be decided under ***Pierre Lorde*** guideline 2 and in his

view, your case presented no “special or exceptional” circumstances to take it outside the scope of the ***Pierre Lorde*** guidelines.

[59] Ultimately, having weighed the aggravating and mitigating factors of the offence and keeping the ***Pierre Lorde*** sentencing guidelines firmly in mind, the Court was satisfied that this was a grave case of manslaughter where an unarmed man was shot in the chest by you with a firearm, but where there were nonetheless mitigating factors.

[51.] Having considered the matter, the Court, in the exercise of its sentencing discretion and bearing the ***Pierre Lorde*** manslaughter guidelines firmly in mind, established a starting point of 18 years for determining the length of your sentence.

[60] *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.

[61] 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.

[62] Focusing next on you as the offender, the Court considered the following mitigating factors which in the view of the Court, have further reduced the seriousness of the offence and suggest a level of personal mitigation of you as the offender. These were:

i.) The fact that after fleeing the jurisdiction following the incident in 2003, you voluntarily surrendered to police in 2008 and cooperated with the police investigations, giving oral and written statements outlining your role in the deceased’s shooting death;

ii.) Your guilty plea; [N.B. Following your return to Barbados in January 2008 and following the subsequent preliminary inquiry and your indictment for murder in 2010, you entered a guilty plea in September 2013 taking full responsibility for your actions thereby obviating the need for a lengthy trial. I have accordingly applied a discount of 4 years from the starting point.]

iii.) Your relatively young age; [N.B. You were 28 years at the time of the incident and are approaching your 39<sup>th</sup> year.]

iv.) Your very favourable Pre-Sentence Report, and in particular, the evidence of the Probation Officer, Mr. Linton who told the Court that you pose a low risk of re-offending;

v.) The regret which you have expressed to the Probation officer, Mr. Linton, for your actions

as disclosed in the Pre-Sentence Report together with the heartfelt public apology which you have today also made;

vi.) The strong plea in mitigation made on your behalf by Defence Counsel, Mr. Pilgrim, QC who urged leniency and highlighted your many achievements and the initiatives you have taken towards self improvement and personal rehabilitation during your lengthy time on remand.

[63] **Time spent on Remand:** According to Prison Officer, Mr. Junior Parris, you were admitted to prison on January 28<sup>th</sup>, 2008 and as at February 28<sup>th</sup>, 2014 you have spent a total of 2,224 days [i.e. 6 yrs 34 days] on remand awaiting the trial and final disposition of this matter.

[64] To this period the Court has added the additional 35 days that have elapsed between February 28<sup>th</sup>, 2014 until to today.

[65] In keeping with the decision of the Caribbean Court of Justice in **Romeo Hall**, you will be given full credit for the now 2,259 days [i.e. 6 years 69 days] that you have to date spent on remand awaiting your trial and the final disposition of this matter.

[66] **Order of the Court: Craig Prescott**, you are hereby sentenced to a term of imprisonment of **9 years** for this offence.

[67] From this sentence and in keeping with the decision of the Caribbean Court of Justice in **Romeo Hall**, there will be deducted, the full period of 2,259 days [i.e. 6 years 69 days] which you have to date spent on remand awaiting final resolution of the matter. In the result, you will be required to serve the additional **2 years 296 days** in custody for this offence.

[68] Your sentence is, however, suspended for a period of 3 years from today's date, which shall be the "operational period" for purposes of section 6 of the *Penal System Reform Act*.

[69] **Craig Prescott**, 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 3 years, you will be liable to be brought back to Court and to be dealt with in accordance with section 7 of the Act.

[70] Do you understand what the Court has just explained to you?

[71] This is the order of the Court.

Maureen Crane-Scott

Judge of the High Court

2014-04-04

