

Barbados

Indictment No: 77 of 2012

**The Queen vs. Rendall Anthony Bourne**

SENTENCING JUDGMENT

**Rendall Anthony Bourne,**

[1] ***Background and plea:*** On October 22<sup>nd</sup>, 2012 you were remanded to the Psychiatric Hospital for a psychiatric evaluation in preparation for your arraignment for the offence of murder. You were seen and evaluated by Senior Consultant Psychiatrist, Dr. Kenechukwu Obiora who prepared a Report for Court purposes.

[2] In his Report dated October 26<sup>th</sup>, 2012, Dr. Obiora expressed the view that you were fit to plead, but recommended that the matter be dealt with on the basis of diminished responsibility.

[3] On Monday, October 29<sup>th</sup>, 2012 you were duly arraigned in the presence of your attorney-at-law, Mrs. Angela Mitchell-Gittens and pleaded “not guilty” to the murder on the 8<sup>th</sup> day of August, 2008, in the parish of Christ Church of Wendell Ashby, but “guilty” to manslaughter.

[4] Following your plea, the learned Director of Public Prosecutions, Mr. Charles Leacock, Q.C. who appeared for the Crown informed the Court that the prosecution had accepted the plea of “not guilty” to murder, “guilty” to manslaughter on the ground of diminished responsibility.

[5] The marginal note of section 4 of the ***Offences Against the Person Act, Cap. 141***, entitled ‘diminished responsibility’, provides at subsection (1), *inter alia*, that “*where a person kills...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, as substantially impaired his mental responsibility for his acts and omissions in doing...the killing*”.

[6] Although the wording of section 4(6) of the ***Offences Against the Person Act, Cap. 141***, appears to envisage a full jury trial in which the accused is convicted of manslaughter on the ground of diminished responsibility, the Court is satisfied that it is perfectly proper to accept a plea of guilty to manslaughter based on that ground provided that there is medical evidence (as there was in this case) plainly pointing to substantially diminished responsibility and clear evidence of mental imbalance. See ***Archbold Criminal Pleading, Evidence and Practice, 2001, paras 19-80 and 19-88; Also R v. Cox, 52 Cr. App. R. 130; and R v. Vinagre, 69 Cr. App. R. 104.***

[7] The propriety of accepting, on an indictment for murder, a plea of manslaughter on the ground of diminished responsibility was discussed and approved in the 1967 decision of the English Court of Criminal Appeal in **R v. Cox**, in which **Winn L.J.** stated at pages 130-131:

*“The Court desires to say yet again, not at all for the first time..., that there are cases where, on an indictment for murder, it is perfectly proper, where the medical evidence is plainly to this effect, to treat the case as one of substantially diminished responsibility and accept, if it be tendered, a plea to manslaughter on that ground, and avoid a trial for murder.”*

[8] **The Facts:** Following acceptance of your plea, the facts and circumstances surrounding the manner in which the deceased met his death at your hands on August 8<sup>th</sup>, 2008 were then outlined to the Court by the learned Director on Monday October 29<sup>th</sup>, 2012. The facts as outlined were accepted by Defence Counsel, Mrs. Mitchell-Gittens and have, in turn been accepted by the Court.

[9] Accordingly I have accepted that you and the deceased man, Wendell Ashby were both known to each other. Both of you also worked in and around the precincts of the Oistins Fish Market which was where you both lived.

[10] In the early morning hours of August 8<sup>th</sup>, 2008, about 5:00 a.m., you were seen by the proprietress of “Lexi’s Bar” as well as by other persons, striking the deceased with sticks and bottles. The several onlookers requested you to stop, but you continued striking the deceased. The incident was reported to police at 5:40 a.m. and the police from the nearby Oistins Police Station promptly responded.

[11] When the police arrived at the scene, they found you sitting on the back of the deceased man, who was observed to have been injured and seriously wounded by the bottles and sticks which you had been seen using on him.

[12] The mortally injured man was transported by ambulance to the Queen Elizabeth Hospital but despite the efforts of the emergency medical personnel, he succumbed to his injuries at around 7:40 a.m. that morning.

[13] Following an autopsy held a few days later, the Pathologist found numerous external injuries on the body of the deceased man. He certified the cause of death as resulting from traumatic severe head and chest trauma with haemorrhage and shock.

[14] You were taken by police to the Oistins Police Station and following an interview, you readily admitted your involvement and gave police a spontaneous written statement explaining what had triggered your actions.

[15] You told police that the deceased man had threatened to kill you and had given you two lashes to your side. According to you, you were forced to represent yourself and that you “*had to kill he.*” You also said that you had stabbed him with a bottle and had beat him up with sticks which you had in your possession.

[16] **Your Previous convictions:** Following the outline of facts, a list of your extensive criminal record of some 25 previous convictions was read into evidence by Keeper of the Records, Constable Rudy Harris.

[17] The Court has observed that your first conviction in 1963 was for wounding. You were subsequently convicted in 1969 and 1976 of three additional counts of wounding. In 1982 you were convicted of the rape and assault occasioning actual bodily harm of a 10 year old girl for which you received concurrent sentences of 7 and 1 year

respectively.

[18] Apart from the wounding offences and the rape and assault to which I have just referred, your criminal record reveals a litany of lesser offences involving disorderly conduct such as indecent language, stone throwing, resisting arrest, indecent assault, blackguard and possession of an offensive weapon. More recently, you have also been convicted of a number of offences involving possession of illegal drugs and drug paraphernalia and criminal damage.

[19] You are therefore no stranger to the criminal justice system and have served custodial sentences of varying lengths of time.

[20] **Your Psychiatric Reports:** Following his outline of the facts, the learned Director advised the Court that you have an extensive history of mental illness and invited Psychiatrist, Dr. Kenekukwu Obiora to read his Report of October 26<sup>th</sup>, 2012 into the record.

[21] The Report revealed that you were first admitted to the Psychiatric Hospital in the year 1979 following an acute psychotic episode. You have had numerous subsequent admissions since then, mostly related to inappropriate and aggressive behavior.

[22] Your diagnoses over the years have been: i) Schizophrenia (with marked affective component) and ii) Co-morbid substance abuse.

[23] Dr. Obiora told the Court that prior to the incident you were admitted to the Psychiatric Hospital on 12<sup>th</sup> July, 2008 following a relapse of your mental illness and were treated and discharged from the hospital on the 5<sup>th</sup> August, 2008 – which, the Court has observed, was just 4 days prior to the incident!!

[24] According to Dr. Obiora' Report, which the Court has also accepted, on the day immediately preceding the incident, you had collected your NIS cheque of about \$1,000 Barbados dollars. On that day also, you had been drinking alcohol, smoking cannabis, giving out money and buying things for people until you ran out of money at about 3 p.m. You then proceeded to beg for money at a gas station in Oistins for the rest of the day and night until about 4 a.m. the following day when you decided to sleep at the Oistins Fish Market.

[25] Around this time, according to what you told Dr. Obiora, the deceased approached you at the market. He insulted your mother and threatened you with a knife. You informed Dr. Obiora that this had made you angry and had caused you to feel threatened. You started to beat up the deceased armed with a wooden staff. You also told Dr. Obiora that your actions had not been premeditated or preplanned but were done on the spur of the moment. You also told him that due to your anger, you both felt, and perceived, a threat to your life.

[26] According to Dr. Obiora, you were assessed at the Prison Clinic approximately 6 weeks following the incident and the assessment revealed symptoms suggestive of formal thought disorder and persisting mental illness. Your anti-psychotic medication was adjusted and during your period on remand, you have since been seen and followed up at the Prison Clinic at regular intervals.

[27] He told the Court that your mental state is currently stable, but that you will require continuing psychiatric care.

[28] Finally Dr. Obiora advised the Court that in his professional opinion, your judgment may have been impaired as a result of your chronic mental disorder and the effect of substance abuse. He suggested that the case be dealt with on the basis of diminished capacity/responsibility on your part.

[29] At the request of your attorney-at-law, a second Report giving a more comprehensive psychiatric history was ordered. The second Report was read into evidence by Senior Consultant Psychiatrist, Dr. Beresford Connell on Monday, December 10<sup>th</sup>, 2012 and has also been accepted by the Court.

[30] Dr. Connell's Report essentially confirmed Dr. Obiora's earlier Report and states that you suffer the co-morbid diagnosis of Chronic Paranoid Schizophrenia and a substance abuse disorder.

[31] The Report also reveals that you have had over thirty (30) admissions to the Psychiatric Hospital since your first admission in 1979.

[32] Dr. Connell explained that Schizophrenia is a complex psychiatric illness characterized by hallucinations, delusions, behavioural disturbances and disrupted social functioning. The condition is usually controlled by antipsychotic medication but regrettably, there is no cure.

[33] He explained that proper management of your condition depends on adherence to a regular regimen of antipsychotic medication. But, he explained, the condition is exacerbated by substance abuse even if the patient is compliant on medication.

[34] He informed the Court that you have a history of poor compliance with medication and that you also abuse cannabis and cocaine. Your condition is well controlled when in hospital and when seen in the Prison's psychiatric clinic and according to Dr. Connell, you have kept well for long periods while incarcerated on small doses of your medication given at monthly intervals.

[35] Dr. Connell's Report indicates that you will need to be maintained on your current antipsychotic regimen and advises that you can be adequately treated in the prison psychiatric clinic.

[36] Dr. Connell expressed the opinion that your long-standing paranoid condition and chronic substance abuse would be expected to impair your judgment and further, that it is reasonable to assume that your Chronic Schizophrenic illness would have played a major role in this offence.

[37] During the course of his testimony Dr. Connell also expressed the following opinion regarding your propensity to give trouble in society in the future given your illness and your poor record of compliance with your medication:

*"He is a very bad paranoid schizophrenic and I cannot presume to say that he's going to be any model out-patient or anything. He's going to give trouble if he's back out in less than 5, 6 years really."*

[38] **Your Psychological Report:** The Court also obtained a psychological report which was read into evidence by Prison Psychologist, Mr. Shawn Pilgrim on March 12<sup>th</sup>, 2013.

[39] With respect to your perspective on the offence, the Prison Psychologist reported that you have accepted limited responsibility for the offence for which you were charged. He states that you believe that you acted in self-defence and that you do not deserve to be punished for your actions.

[40] Mr. Pilgrim informed the Court that in his assessment, you presented as a severely disorganized and psychologically impaired individual. Your general movements were slow and your posture rigid. You also appeared unable to control your limbs and your hands shook throughout the meeting. He described your thought content as jumbled and considered that you did not express your feelings in a coherent way.

[41] The Prison Psychologist also informed the Court that you had some difficulty following the sequence of questions and that your speech was generally rambling and unfocused, and often not relevant to the topic under discussion. He found you unable to explain the nature of your psychiatric illness. Additionally, in his opinion, you appeared to lack a substantial degree of personal impulse control and appear willing to resort to violence to resolve interpersonal conflicts.

[42] He assessed you as having Adult Anti-Social Behaviour and Schizophrenia (Disorganized Type).

[43] Mr. Pilgrim expressed the view that due to your current psychological and emotional presentation and your stated lack of interest in working or participating in any vocational or rehabilitative programs, you are a poor candidate for inclusion in any available programs at the Prison.

[44] Mr. Pilgrim advised the Court that you are likely to remain relatively stable while under psychiatric care, whether at the Prison or at the Psychiatric Hospital. He was, however, of the view that *"there is no evidence to suggest that you can maintain your current level of behavioural control when not institutionalized"*. He also expressed the view that if you gain access to drugs, you are likely to resume use of these substances and this will undermine your treatment objectives.

[45] Mr. Pilgrim expressed the view that your further detention at HMP Dodds will decrease the chances of your either suffering from or committing similar acts in the future.

[46] Asked to expand on his view that *"there is no evidence to suggest that you can maintain your current level of behavioural control when not institutionalized"*, Mr. Pilgrim told the Court that based on the facts of the case which suggested that the offence was committed shortly after your release from the Psychiatric Hospital, and based on your history of incarceration, hospitalization and offence, you have been in a downward spiral for the majority of your life.

[47] He told the Court that he was unable to identify a period in your life when you were able to successfully manage all of the issues with which you are faced. He therefore was not confident that you will be able to maintain the level of stability which you currently display, outside of a structured environment.

[48] Asked for his opinion as to whether you are a danger to the public, Mr. Pilgrim stated his belief that if not treated and if you are exposed to or resume your illegal drug use, you would be a great danger to society.

[49] **The Pre-Sentence Report:** As required by section 37(1) of the *Penal System Reform Act, Cap.*

139, a Pre-sentence Report was ordered and was read into evidence by Probation Officer, Ms. Maxine Baker on April 26<sup>th</sup>, 2013 and has since been reviewed by the Court.

[50] The Report has given the Court valuable insight into your family background, your educational and employment history and your current attitude to the offence.

[51] The Report shows that you are now a 65 year old man who first came into conflict with the criminal justice system from the early age of 17. During the past 43 years you have accumulated some 26 convictions, the most serious of which is the one for which you are now to be sentenced.

[52] It is clear that your relationship with your family members is strained due in large part to your chronic Paranoid Schizophrenia and co-morbid substance abuse. Your youngest brother reports that any relationship he has with you depends on your ability to be rational.

[53] He states that whenever you associate with undesirables and ingest alcohol and illegal substances, you become distorted in your thought patterns, exhibit irrational behavior, hallucinate and speak incoherently of "persons following you."

[54] As regards your current attitude to the offence, the Court notes that consistent with your written statement to the police following the incident, you told the Probation Officer that the deceased was a dear friend of yours, but that he had launched an attack on you and that your only intention had been to save yourself from bodily harm. You told the Probation Officer that you had always shared your meals, money and drugs with the deceased and had always looked out for his welfare and would not intentionally have done anything which would have caused his death.

[55] Following her assessment of your risk of reoffending, the Probation Officer expressed the opinion that if you continue to default on your medication and to ingest illegal drugs, your rate of reoffending and risk of harm to the public may escalate in the future.

[56] Ms. Baker also stated that while your attitude to the offence appears remorseful, your potential to reoffend and the risk of harm to the public could actualize in the not too distant future if responsibility for your mental care remains solely within your purview.

[57] ***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*.

[58] ***Reasons for imposing a custodial sentence - s.35:*** Having considered the outline of facts and the violent circumstances in which this defenseless man lost his life at your hands at the Oistins Fishing Complex in the early morning hours of August 8th, 2008, I have formed the opinion for purposes of section 35(2)(a) of the *Penal System Reform Act* that the offence is so serious that only a custodial sentence can be justified.

[59] At the outset and for sentencing purposes, the Court has accepted the medical evidence that at the time of this

killing, you were acting with diminished responsibility in that you were suffering from an abnormality of mind arising from your long-standing chronic paranoid schizophrenic condition coupled with the effects of your chronic substance abuse.

[60] The Court has also accepted Dr. Obiora's report that for most of the day immediately prior to the killing, you had been drinking alcohol and smoking cannabis. You eventually went into the market to sleep in the early morning hours of August 8<sup>th</sup>, 2008 and got into an altercation with the deceased man who, according to your police report, had threatened you and lashed you in your side.

[61] Following the incident, you subsequently told Dr. Obiora that the deceased had threatened your mother and threatened you with a knife he was carrying on his waist. There was, however, nothing in the outline of facts by the learned Director to suggest that the deceased had been armed. Accordingly, based principally on the evidence of the several persons who had witnessed the attack, the Court accepted that you were the aggressor and that the deceased was unarmed and defenseless.

[62] Given your long standing paranoid condition and co-morbid substance abuse disorder and the impairment in judgment which your abuse of alcohol and illegal drugs would have caused, the Court was satisfied that your actions at the time of the incident were due to paranoia and your severely diminished cognitive abilities and impaired judgment.

[63] Nevertheless, even allowing for some degree of "provocation" on the part of the deceased, the Court was satisfied that your prolonged attack on the defenseless man with a broken bottle and stick despite the pleas of several onlookers, coupled with the traumatic injuries which the victim sustained would, but for the fact of your diminished responsibility, ordinarily have placed the offence close to the borderline of murder.

[64] Having further considered the violent nature of this killing, the traumatic injuries which the victim sustained, the several matters outlined in your psychiatric reports, the pre-sentence report and the psychological report, together with the testimony of the Prison Psychologist which I have accepted, I have further formed the opinion for purposes of section 35(2)(b) of the Penal System Reform Act that only a custodial sentence would be adequate to protect the public from serious harm from you as the offender.

[65] Additionally in accordance with s. 40(2), I have taken into account as a factor which in my view, significantly aggravates the seriousness of this offence, the fact that, as your lengthy criminal record clearly shows, you had previously been convicted of several offences under the ***Offences Against the Person Act***, that is to say, 4 wounding offences and one offence of assault occasioning actual bodily harm.

[66] As required in section 35(4), I am required to inform you that your long standing paranoid condition, coupled with your co-morbid chronic substance abuse disorder, your willingness to resort to violence to resolve interpersonal conflicts together with your repeated recidivism and high risk of reoffending, have all convinced me that only a custodial sentence will suffice to protect the public from serious harm from you.

[67] ***Length of the Custodial Sentence- Section 36:*** Against the background of the Court's findings for purposes of section 35 of the Penal System Reform Act, I turn next to section 36 of the Act and to a consideration of what length of custodial sentence will be commensurate with the seriousness of the offence, and be necessary to protect the public

from serious harm from you.

[68] In this regard, I have accepted Dr. Obiora's medical opinion that your judgment may have been impaired as a result of your chronic mental disorder and the effect of substance abuse. Additionally, I have also accepted Dr. Connell's professional opinion, to the same effect, that your long-standing paranoid condition and chronic substance abuse would be expected to impair your judgment and further, that it is reasonable to assume that your Chronic Schizophrenic illness would have played a major role in this offence.

[69] The Court is mindful of the fact that while the usual punishment for manslaughter is imprisonment for life as provided in section 6 of the **Offences Against the Person Act, Cap. 141**, this is no ordinary case of manslaughter and you stand before this Court for sentencing in a case manslaughter where the charge of murder has been reduced by reason of this Court's finding, based on the medical evidence, that at the time of the killing you were acting with a diminished responsibility.

[70] As to the sentencing options which are available in this jurisdiction to deal with a person convicted of manslaughter on the ground of diminished responsibility, the Court is satisfied that the ordinary principles, including the guideline judgments normally applicable to the sentencing of persons who are not suffering from an abnormality of mental functioning are not appropriate to the just and proper disposition of this case where a plea of guilty to manslaughter has been accepted on the basis of diminished responsibility.

[71] I have determined that the manslaughter guidelines established by the Court of Appeal in the unreported case of **Pierre Lorde v. R, Criminal Appeal No. 11 of 2003** do not envisage the disposition of a case where a plea of guilty to manslaughter has been accepted on the basis of diminished responsibility. In the circumstances, those guidelines have provided very little assistance to the Court in determining the length of your sentence.

[72] **The Offences Against the Person Act, Cap. 141**: The Court has adverted to section 4(6) of the **Offences Against the Person Act**, which following an amendment in 2009 now provides, *inter alia*, that:

*“(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 the Court's pleasure is known, and thereupon the Court may give such order for the safe custody of the person during the Court's pleasure as the Court thinks fit.”*

[73] **The Mental Health Act, Cap. 45**: The Court also had regard to the provisions of the **Mental Health Act, Cap. 45** which came into operation in 1989 and has been subsequently amended from time to time.

[74] Section 7(1) of the Act provides:

*“7(1) Where in the opinion of a Court, an accused person appears to be suffering from mental disorder, the Court may order that person to be admitted to a mental institution for a period **not exceeding 8 weeks.**”*

[75] Section 13(1) (as amended by Act No. 12/2009) now provides, *inter alia*:

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

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

*that Court shall order him to be detained in a mental hospital during the Court's pleasure and thereupon the Court may give such directions for the safe keeping of the appellant during the detention as the Court thinks fit.”*

[76] **The Legal Submissions:** In her plea in mitigation, Defence Counsel, Mrs. Mitchell-Gittens accepted as undisputed the fact that you currently pose a serious danger to the public and to yourself.

[77] She submitted, as did the learned Director, that neither an 8-week hospital order under the ***Mental Health Act***, nor a sentence of life imprisonment would be appropriate in the circumstances and urged the Court to consider the imposition of an appropriate determinate sentence.

[78] She suggested that Mr. Bourne also be mandated to undergo mandatory drug rehabilitation together with any psychological or social programmes which will equip him with the skills to ensure that he does not re-offend.

[79] For his part, the learned Director of Public Prosecutions also invited the Court to consider a determinate sentence. He suggested a starting point in the region of 20 years appropriately discounted for time on remand and other matters usually taken into account at sentencing.

[80] Mr. Leacock submitted that if a lengthy determinate sentence were to be imposed, in practical terms, you would be eligible for release in about 10 years and in any event, at a time when you would be in your mid-70's. According to the Director, at that age, you would be substantially less able to manifest the level of violence or the levels of recidivism which you have thus far demonstrated.

[81] Mr. Leacock agreed that it was also open to the Court to order your detention at the Court's pleasure and to make arrangements to review the detention periodically.

[82] **Order of the Court: Rendall Anthony Bourne**, having given due consideration to this matter and in accordance with the Court's powers under the *Penal System Reform Act* and the *Offences Against the Person Act*, and for the reasons which I have earlier outlined, you are to be detained in custody at HMP Dodds until the Court's pleasure is known.

**Arrangements for your safe custody during your detention:**

[83] **Psychiatric Care:** During the period of your detention, you will continue to be maintained on your current anti-

psychotic regimen and will receive treatment as necessary in the prison psychiatric clinic.

[84] Rehabilitation: Despite the opinion expressed by Mr. Pilgrim, the Prison Psychologist, that you are a poor candidate for inclusion in any available rehabilitation programmes due to your current psychological and emotional presentation and stated lack of interest, you are nonetheless ordered to undergo alcohol and substance abuse rehabilitation together with such other programmes and interventions as may be arranged for you by the Superintendent of Prisons.

[85] 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 in the event of your eventual release.

[86] Release from Detention: In the event that at some period during your detention, your attending psychiatrists form the view that the virulence of your long standing Paranoid Schizophrenia has diminished to such an extent that you can be released from custody without posing a danger to the public or to yourself, an application may be made to the High Court (supported by the relevant medical reports) seeking an order for your release

[87] Periodic Review: Until such time as an order for your release from detention is made, the Superintendent of Prisons will make the necessary arrangements to bring you back before the High Court for a review of your sentence at regular 4-yearly intervals in the month and years indicated below:

- 1) October 2017;
- 2) October, 2021;
- 3) October, 2025;
- 4) October, 2029;
- 5) October, 2033.

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

[87] Remand Time: I have taken into account the fact that because an order of detention at the Court's pleasure is by its very nature, a custodial sentence for an indeterminate period, you will gain no credit for the now 1878 days which you have to date spent on remand prior to the making of this order.

[88] This is the order of the Court.

Maureen Crane-Scott

Judge of the High Court

2013-10-02

