

Barbados

Indictment No: 38 of 2012

The Queen vs. Charles Matthew O'Brien Frederick
SENTENCING JUDGMENT

Charles Matthew O'Brien Frederick,

[1] **Background:** On Friday, April 23rd, 2012 you were arraigned on a 2-count Indictment with the double murder on 2nd August, 2011 of Gerhard Stock and Arthur Chadderton.

[2] On the first count on the Indictment, you pleaded not guilty to murdering Gerhard Stock, but guilty to manslaughter. On the second count, you similarly pleaded not guilty to murdering Arthur Chadderton, but guilty to manslaughter.

[3] **Basis on which the pleas were accepted by the DPP:** Both pleas were accepted by the Director of Public Prosecutions, who appeared for the Crown. The basis on which the pleas were accepted was stated by the learned Director in the following terms:

"... I have accepted those pleas for the following reasons: ... from the evidence, it is clear that this was a robbery, in which the only evidence we have about the state of intention of the accused comes from him; and the evidence also comes from the complainants who said that when he went into the house, he demanded money. So clearly, this started out as a robbery."

[4] Mr. Leacock explained that following the abolition of the doctrine of constructive malice or the felony murder rule by way of the 1994 amendment to the *Offences Against the Person Act, Cap. 141* murders committed in the course of a robbery or in the course of a burglary cannot be murder, but can only be manslaughter.

[5] The Director further explained that:

"...based on operation of law, since the 1st September, 1994, in a case in which death results pursuant to a robbery or a burglary, those offences can only be considered manslaughter. And it is because of the law, I am duty bound to take this course."

[6] **The Facts:** The facts and circumstances surrounding the commission of these 2 offences were outlined to the Court by the learned DPP on April 23rd, 2012 and were accepted by Defence Counsel, Mr. Gordon. In the course of his outline, the DPP characterized the horrific events of August 2nd, 2011 as a *"most diabolical crime."*

[7] He described to the Court how the elderly couple, Arthur and Gwenda Chadderton had been in the comfort of their home at Salters, St. George around 7:45 pm on the night of August 2nd, 2011. They were enjoying the company of their daughter Meta and her husband Gerhard Stock and the couple's 3 young children who lived overseas and who were all vacationing in Barbados from their home in Austria. Another family friend, a little English girl, was also staying over at the house that fateful evening.

[8] The sliding doors to the front of the house were open and everyone in the house was going about their lives. Mrs. Gwenda Chadderton was on the computer with her son-in-law, Gerhard standing next to her watching a Reggae clip. Mr. Chadderton was downstairs repairing a lawnmower, while the couple's daughter, Meta was in the kitchen and the young grandchildren were around the house. The learned Director painted a picture of a happy family at home,

working and playing, relaxed and going about their lawful business.

[9] Suddenly and without warning, the peace and tranquility of the Chadderton's happy home was forever shattered when, you and your accomplice burst into the house through the open front door and entered the house. Both of you were wearing ski-masks. You were carrying a silver-coloured gun which you pointed at them, demanding money.

[10] Meta Stock ran downstairs and alerted her father to the presence of masked robbers in the house. Meanwhile, the horror continued to unfold upstairs. You pointed the gun at Gerhard Stock demanding money, while Gerhard Stock protectively called his young children to himself. Your accomplice intervened and ordered Mrs. Chadderton and the screaming and terrified children into the kitchen, threatening them at knife-point to be quiet.

[11] Having been alerted by his daughter Meta as to what was happening upstairs, Arthur Chadderton bravely armed himself with a guava stick and went upstairs. He confronted you and struck you on the head with the stick. You then turned around and discharged three shots at 79 year old Mr. Chadderton. He was later certified to have died at the scene and was subsequently found, following an autopsy, to have died from hemorrhagic shock caused by multiple gunshot injuries to the face, chest and back.

[12] Mr. Chadderton's son-in-law Gerhard jumped on you. As he was bravely struggling to disarm you and to remove your mask, you also discharged shots at him. One of the shots struck him in the left-side of his chest. Gerhard Stock, however, did not die at the scene. He was transported to the Accident & Emergency Department but subsequently died on the operating theatre of that one fatal gunshot to the left side of his chest.

[13] After the shooting, you and your accomplice then ran out of the house and made your escape, empty handed.

[14] Following police investigations, you were taken into custody on August 30th, 2011 and a movement statement was taken from you. The specifics of your movements were checked by police and found to be untrue. As a result, a further interview was conducted with you on August 31st, 2011. On the second occasion, you voluntarily cooperated with police and gave a comprehensive written statement under caution in which you admitted to your involvement in the home invasion and the shooting deaths of both Arthur Chadderton and Gerhard Stock.

[15] Some days later you were taken by police to the Chadderton's home where in the presence of police and a number of family members, you pointed out certain areas to the police and admitted how you and your associate had entered and what you did and where.

[16] Whilst at the Chadderton house and in the presence of the investigating officers, you also apologized to the householders and to the family. The fact of your apology was supported by a relative of the deceased who confirmed that he was present at the Chadderton house on September 18th, 2011 and said that after pointing out certain areas to police, you had turned to the family crying and said that you were very sorry about what had happened and that if you could give your life to bring them back you would do it.

[17] With the aid of the police crime scene photographs, the Director of Public Prosecutions showed the Court photographs of the outside and inside of the Chadderton's split-level house where the incident happened. The Court also viewed photographs of the lifeless body of Arthur Chadderton and the gruesome wounds on his face, back and navel area. The Court was also shown photographs of the spent cartridge cases seen inside the house and the trail of blood on the floor between the hallway and different rooms in the house.

[18] At the request of Defence Counsel, the learned Director of Public Prosecutions drew the Court's attention to the following oral statement which you made to the arresting officer at the time of your charge, namely: *"I sorry for the*

incident. If I could turn back the hands of time, I woulda never gone to that house. I wish God would strengthen the family and I hope that something good come out of this.”

[19] **Your Previous convictions:** Following the outline of facts, a list of your previous convictions was read into evidence by Keeper of the Records, Constable Basil Hunte. The Court was informed that you have 10 previous convictions details of which were outlined to the Court as follows.

[20] On **7th November, 1997** you were given concurrent sentences of 2 years imprisonment by the Magistrate of the District A Court for 5 offences involving robbery and theft. On the same day, the same Magistrate also imposed a concurrent sentence of 12 months imprisonment for the offence of unlawful assault.

[21] On **20th December, 1999**, you were convicted, reprimanded and discharged by the Magistrate of the District A Court for possession of 3 rounds of .38 ammunition. On the same day, you were sentenced by the Magistrate of the District A Court to 50 months imprisonment for having in your possession in a public place, a .38 calibre revolver.

[22] According to the Keeper of the Records, you were convicted in the Supreme Court of the burglary of Josef's Restaurant which you entered as a trespasser, armed with an offensive weapon, namely a knife and stole cash and articles with a total value of \$29,600.00. On **October 14th, 2005**, you were sentenced to 7 years imprisonment for that offence.

[23] Finally, the Court was advised that on March 8th, 2012, you pleaded guilty and were convicted before the Supreme Court of a second burglary offence involving your having on **July 24th, 2011**, entered as a trespasser the dwelling house of Helen Haynes and stealing valuables totaling \$220.00 armed with a firearm and a knife for which you are still to be sentenced.

[24] The Court cannot do otherwise but to observe that this last conviction involved a burglary which was committed by you with a firearm in which you entered another dwelling house a mere 8 days immediately preceding the date when the 2 offences now before this Court were committed. This is a significant aggravating factor which has been taken into account in accordance with s. 40(2) of the *Penal System Reform Act, Cap. 139*.

[25] **The Pre-Sentence Report:** As requested by Defence Counsel and for purposes of the *Penal System Reform Act, Cap. 139*, a Pre-sentence Report was obtained and was read into evidence by Senior Probation Officer, Ms. Angela Dixon on June 18th, 2012.

[26] The Report shows that your troubles appear to have emerged during your early adolescent years whilst at the Parkinson Memorial Secondary School, when you vandalized school property and were verbally abusive to the teachers. On your mother's return to Barbados to investigate your situation, you told her that you felt that there was something wrong with you and pleaded for her help.

[27] She then made arrangements to have you join her in the United States of America and you emigrated to the States to live with her in 1988 at the age of 13. You however dropped out of school at the age of 15 and approximately 4 years after your arrival in the United States, you came into conflict with the law and were sentenced to a term of imprisonment. The Report states that according to your mother, during your incarceration in the United States, you attempted suicide and were subsequently diagnosed with schizophrenia by a prison psychologist.

[28] Following your incarceration, you were deported to Barbados in 1995 and according to the Report, established ties with the criminal elements of the community in which you reside and continued to participate in illegal activities. Although you maintain that you have since overcome your addictions, you nevertheless, have a history of psychiatric

intervention induced by drug and alcohol abuse.

[29] Finally, the Report states that although you accept responsibility for your criminal actions, you have previous convictions and appear to be a recidivist.

[30] **The Psychological Report:** At the request of Defence Counsel which was not opposed by the learned Director, a psychological report was obtained and was read into evidence by Prison Psychologist, Mr. Shawn Pilgrim on June 18th, 2012.

[31] The Prison Psychologist essentially confirmed the Probation Officer's report with respect to your understanding of and attitude to the offences. He reported that you believe that your behavior was very wrong and that you deserve to be punished. He stated that you are also very embarrassed and remorseful about your actions and have expressed the hope that you will be allowed to return to the community sometime in the future so that you could attempt to redeem yourself. You also informed him that you expect to be given a custodial sentence and that you are prepared to work towards self improvement, during that time.

[32] You were assessed using the Personality Assessment Inventory (PAI). According to Mr. Pilgrim your clinical profile revealed profile patterns usually associated with marked distress and the presence of significant impairment in functioning.

[33] In particular, your psychological profile suggested a person with a history of poly-substance abuse. You informed Mr. Pilgrim that your use of drugs has had numerous ill effects on your functioning and that you have little ability to control the effect that drugs are having on your life.

[34] With respect to anger management, you have described yourself as potentially prone to extreme displays of anger, including damage to property and threats to assault others. The Prison Psychologist has advised that it is likely that those who come into contact with you would be intimidated by your temper and your potential for violence. The Psychologist has also drawn the Court's attention to the fact that your risk for aggressive behavior is further exacerbated by the presence of several factors, such as impulsivity, a sense of persecution and troubled close relationships, all of which have been shown to be associated with increased potential for violence.

[35] He specifically diagnosed you, *inter alia*, as displaying Adult Anti-Social Behaviour. Additionally, the Psychologist expressed the view that your extensive history of delinquent and anti-social behavior strongly indicates that your ability to think in a constructive and socially desirous manner is significantly impaired. He has, accordingly, recommended that you are a candidate for immediate psychotherapeutic intervention aimed at addressing the problematic features of your personality.

[36] Under cross-examination by Defence Counsel, Mr. Gordon, Mr. Pilgrim explained how in his view, your poly-substance abuse would impair your ability to function from day to day. He stated that it would affect your decision making and alter your perspective and not allow you to relate to others in a reasonable coherent way. Mr. Pilgrim further indicated that poly-substance abuse was a disinhibiting factor and weakened the social bonds which allow persons to know right from wrong and to understand what behaviours are expected of them in certain contexts. According to him, most persons will engage in behavior while intoxicated that they may not engage in while sober.

[37] Under cross-examination by the Director of Public Prosecutions, the Prison Psychologist listed your anger issues and your tendency to lash out when angry, your inability to make decisions and your history of drug use among what he agreed were your psychopathic tendencies. He agreed with the DPP's suggestion that the serious offences disclosed in your record present a grave and present danger to the population. The Prison Psychologist further agreed

that your constant re-offending, your high level of recidivism and the escalating gravity of offences are symptomatic of a personality disorder and that if your pattern of offending continues that would definitely be dangerous to society.

[38] **Reasons for imposing Custodial Sentences - Section 35(4):** Having considered the violent and horrific manner in which these two offences were committed, I have formed the opinion for purposes of section 35(2)(a) of the *Penal System Reform Act* that both offences are so serious that only a custodial sentence can be justified.

[39] Having further considered the violent nature of both killings, coupled with the matters outlined in the pre-sentence and psychological Reports which I accept, 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.

[40] Additionally in accordance with s. 40(2), I have taken into account as a factor which in my view, significantly aggravates the seriousness of both these manslaughter offences, the fact that, as your last conviction clearly shows, on July 24th, 2011 (a mere 8 days prior to the date on which these 2 offences were committed) you also entered as a trespasser a dwelling house belonging to another Barbadian householder and were similarly armed with a firearm.

[41] While your last conviction involved an aggravated burglary of a dwelling house, the facts and circumstances of these 2 manslaughter offences for which you are to be sentenced, clearly show that the double killings in this case took place during the course of what can only be described as a bold-faced home-invasion in which you were also armed with a firearm.

[42] In short, the Court is satisfied that a clear pattern of serious offending by you with the use of a firearm has emerged which requires a public denunciation by this Court in the clearest of terms.

[43] As required in section 35(4), I am required to inform you that your history of poly-substance abuse, coupled with your anger management issues, the problematic features of your personality which put you at increased risk for potential violence together with your extreme history of delinquent and anti-social behavior and your demonstrated recidivism and pattern of serious offending, have all convinced me that only a custodial sentence can be justified and further, that only a custodial sentence will suffice to protect the public from serious harm from you.

[44] **Length of the Custodial Sentences- Section 36:** Against the background of my 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 the length of the custodial sentences which will be necessary to reflect the seriousness of both offences as well as to protect the public from serious harm from you.

[45] As is generally known, section 6 of the *Offences Against the Persons Act, Cap. 144* stipulates that the permitted maximum custodial sentence which may be imposed on any person convicted of manslaughter is imprisonment for life.

[46] However, as is clear from the manslaughter guidelines established by the Barbados Court of Appeal in ***Pierre Lorde***, the statutory penalty of imprisonment for life is to be reserved only for the most serious manslaughter offences.

[47] In issuing its manslaughter guidelines in ***Pierre Lorde***, in 2006, the Barbados Court of Appeal stressed that the 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.”*

[48] In explaining the rationale for developing the guidelines, the Court of Appeal also stated that it was concerned that too many deaths are caused in Barbados through the use of illegal firearms. It considered that it had a clear duty *“to ensure that public confidence in the criminal justice process is maintained by the imposition of appropriate penalties which take into account penal objectives of deterrence (individual and general), just deserts and the protection of the*

public.”

[49] Finally, adopting the observations of Lord Lane CJ in the case of ***Bashir Begum Bibi, (1980) 71 Cr. App. R. 361 @ 362***, the Barbados Court of Appeal indicated that in issuing the manslaughter guidelines, the Court was “*not aiming at uniformity of sentence*”, which would be impossible, but rather, “*uniformity of approach.*”

[50] 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.

[51] Against the foregoing background, I am 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*.

[52] As the transcript of these proceedings will show, on June 18th, 2012, following the presentation of the Probation and Psychological Reports and the evidence of your remand record presented by Prison Officer, Mr. Boucher, the Court signaled to the Director of Public Prosecutions, Mr. Leacock and to Defence Counsel, Mr. Gordon that in view of the extreme seriousness of both offences, the Court would be considering the appropriateness of the imposition of life sentences in this matter.

[53] During the course of his legal submissions on sentence, Mr. Leacock, Q.C. outlined the law and the criteria to be applied for the imposition of life sentences and cited relevant case law.

[54] He characterized the offences as the “*...brutal, coldblooded, calculated, recidivist killing of two householders who could have gone nowhere else but in the safety of their own home.*” He highlighted the pattern of your history of robberies, the fact of your deportation from the United States and urged the Court to impose life sentences and to “*take the man off the streets for the rest of his natural life.*”

[55] While he did not expressly advert to the ***Pierre Lorde*** guidelines, it is clear from his submissions in support of the imposition of life sentences, that the DPP was in effect, urging the Court to find that while the offences are serious and would ordinarily each attract a term of imprisonment commensurate with the seriousness of both offences, the offences are violent offences and you as the offender have been shown to pose such a danger to the public, that life sentences, being the permitted statutory maximum sentence at the upper end of the range in guideline 1 of ***Pierre Lorde*** should be imposed.

[56] In his lengthy reply, Defence Counsel, Mr. Gordon urged the Court not to impose life sentences. He submitted that in his view, the facts of the case fell squarely within guideline 2 of ***Pierre Lorde***. He further submitted that because of the early guilty pleas, the absence of an intention to kill and the struggle which had taken place with the 2 householders which he regarded as mitigating circumstances, the appropriate sentences should be within the range of 14 to 18 years.

[57] In rebuttal, Mr. Leacock cited the case of ***Nicholas Scantlebury (Criminal Appeal No 14 of 1996 unreported decision of 27th September, 1999)*** in which a life sentence was passed by the trial judge and upheld by the Court of Appeal for the killing of a householder during the course of a home invasion on facts very similar to the facts of the current case, where Scantlebury broke into the home of a woman in St. George and when she confronted him in her bedroom, he shot her dead.

[58] In response to Mr. Leacock's legal submissions, Mr. Gordon asked the Court to note that in the case of **Nicholas Scantlebury** cited by the DPP, Scantlebury had not sought to spare the victims the pain and anguish of a contested trial and that the life sentence had been imposed after a full contested trial. He asked the Court to take into account the fact that by pleading guilty to these 2 unlawful killings, the families of both victims in this case had been spared the pain and anguish of re-living the ordeal during a full trial.

[59] Mr. Gordon also outlined the facts and circumstances of a number of local manslaughter cases where custodial sentences of various determinate periods were either affirmed or substituted by the Court of Appeal and in which the facts showed a level of deliberateness or, as he put it, pre-meditation.

[60] He referred, in particular, to the facts and the various custodial sentences which were handed down respectively in the cases of **Rodney Hinds, Errol Miller, Eli Bryant, Troy Mascoll, Andre Lovell and Marlon Mayers, Yuri Agard, Mark Sealy** and **Richard Hurley**. He submitted that given the circumstances of those cases, despite having your been in trouble from a tender age, you did not deserve a sentence of life imprisonment.

[61] The Court has considered the manslaughter sentences which were imposed in the several cases cited by Defence Counsel, Mr. Gordon. While the facts of those cases may provide the Court with useful insights into the nature of the unlawful conduct which caused death in each case, the Court is keenly aware that they are of limited utility in determining the appropriate length of sentence to be imposed in the current case, since full details of the considerations which would have been taken into account by the sentencing court in each case are unknown. In particular, it is not known whether, as in this case, psychological assessments were available or whether there was evidence, as in the present case of a pattern of serious offending or whether the various offenders were considered a danger to the public.

[62] The Court has considered Defence Counsel's submissions that the facts and circumstances of these offences ought properly to be regarded as falling within guideline 2 of the **Pierre Lorde** and further that in view of the early guilty plea, a sentence of 14-18 years was appropriate.

[63] I must respectfully disagree. It is my considered opinion that the facts of this case fall squarely within guideline 1 of **Pierre Lorde** in that they disclose the commission of a horrendous double killing of 2 innocent householders during the course of a home-invasion and where both deaths were caused by an illegal firearm.

[64] Additionally, both offences were committed in circumstances where there are no mitigating features. In this regard, I completely reject Mr. Gordon's submission that I should regard as a mitigating feature of both offences, the struggle which ensued inside the Chadderton house between the deceased victims and Charles Frederick in which both victims bravely sought (one with a guava stick, the other with nothing but his bare hands) to subdue the would-be robber.

[65] The Court considers that in Barbados as elsewhere, a man's home is his castle. In seeking to confront their attacker, Arthur Chadderton and Gerhard Stock, like the victim in **Nicholas Scantlebury**, were only doing what any householder might be expected to do when faced with the presence of an armed robber inside the sanctuary of their home.

[66] It is therefore ludicrous for Defence Counsel to suggest that an armed robber should be permitted to claim as a mitigating factor, the fact that he had only shot and killed the householders with the firearm he was carrying because they were attacking him!

[67] In this regard, I endorse completely, the following sentiments expressed by **Lord Judge CJ** in 2010 in the English

Court of Appeal case of **R v. Wilkinson [2010] 1 Cr. App. R. 100:**

“The gravity of gun crime cannot be exaggerated. Guns kill and maim, terrorise and intimidate. That is why criminals use them...Sentencing courts must address the fact that too many lethal weapons are too readily available: too many are carried: too many are used, always with devastating effect on individual victims and with insidious corrosive impact on the wellbeing of the local community.”

[68] I have also considered the number of shots which were fired at each victim during the course of the home-invasion, as well as the location of the gunshot wounds on the bodies of both victims of these cowardly crimes and I am further satisfied that the facts of each killing place the offences on the borderline of murder.

[69] In this regard, I have accepted that Arthur Chadderton received 3 gunshot wounds, one in his face, one in his chest and quite significantly, one in his back. I have also accepted that Gerhard Stock died from a single gunshot wound to his front left chest in the region of his heart.

[70] As I have already stated, in accordance with s. 40(2), I have taken into account as an aggravating factor of both these manslaughter offences, your most recent conviction for burglary where you also entered another Barbadian home also carrying a firearm.

[71] In summary, I am satisfied that the double killings which were committed by you in this case are horrendous and violent offences where both deaths were caused by a firearm and the facts are on the borderline of murder with no mitigating features. In the circumstances, I consider the appropriate range of sentence to be considered in this case is that set out in guideline 1 of **Pierre Lorde**.

[72] I have considered the cases of **Hodgson (1967)**, **Dempster (1987)** and **Chapman (2000)** cited by the DPP, together with the local case of **Oral Andy Devine Cummins (Criminal Appeal No: 56 of 1995, unreported decision of 13th July, 2004)** where **Hodgson** was applied.

[73] I am aware that the following 3 criteria must be satisfied when a life sentence is imposed:

- i. The offence must be grave enough to warrant a very long sentence;
- ii. The nature of the offence or the offender's history shows that he is unstable and likely to commit such offences in the future; and
- iii. The consequences of the offence to others may be especially injurious, as in the case of sexual offences or crimes of violence.

[74] I am satisfied that both offences in this case are so grave and so serious that by their very nature they warrant very long custodial sentences and accordingly satisfy the first requirement in **Hodgson**.

[75] I have accepted the matters outlined in the Pre-sentence report as well as in the Psychological report and the pattern of serious offending which emerged when the offender's most recent conviction for aggravated burglary is taken into account. I have also had regard to evidence of the Prison Psychologist to the effect that your constant re-offending, your high level of recidivism and the escalating gravity of offences are symptomatic of a personality disorder and further, that if your pattern of offending continues that you present a clear and present danger to society.

[76] In the light of the foregoing, given your pattern of serious offending, your continual recidivism and your diagnosis of adult anti-social personality disorder, I am satisfied that you are a candidate for immediate psychotherapeutic intervention aimed at addressing your numerous problematic personality features. Furthermore, I am satisfied for purposes of the second requirement in **Hodgson** that in the absence of such an intervention, there is every possibility of your continuing to be a danger to the public for a period which cannot reliably be estimated.

[77] Finally, with respect to the third requirement in **Hodgson**, I am satisfied that the consequences of both these offences have been especially injurious to the family of the 2 deceased victims who (as the Pre-Sentence Report shows) are trying to piece their lives back together and are still undergoing counseling. Arthur Chadderon's widow, Gwenda, is still unable to discuss the incident and continues to grieve as she attempts to come to terms with the magnitude of her loss.

[78] I am satisfied that apart from its consequences on the family, the circumstances of this horrendous double killing of 2 innocent victims with a firearm within the confines of their own home during a home-invasion, have also outraged the sensibilities of members of the public both at home and abroad. I am satisfied that in addition to protecting the public from serious harm from you, the imposition of life sentences for these 2 offences will also have a denunciatory value, and be reflective of public abhorrence which Barbadians and the wider international community feel for the horrendous circumstances of these killings.

[78] The Court is of the view that while guideline 1 of **Pierre Lorde** sets out the upper range of sentences for the most serious manslaughter offences, as drafted, it does not purport to comprehensively cover every eventuality and much is still left, as the Court of Appeal expressly explained, to the exercise of judicial discretion.

[79] I am also satisfied that given the horrendous double killing which occurred in this case, I have the flexibility within guideline 1, in the exercise of my discretion even in the case of a plea of guilty, to impose life sentences for these 2 violent manslaughter offences where death was caused by a firearm and where the facts are on the borderline of murder with no mitigating features especially where the **Hodgson** criteria have also been clearly shown to have been established.

[80] In considering the length of the sentences to be imposed, I have of necessity, also considered the provisions of section 36 and in particular subsection 36(2)(b). I am aware that as provided in subsection 36(4) a custodial sentence for an indeterminate period, such as a sentence of imprisonment for life, shall be regarded for purposes of subsections 36(2) and (3) as a custodial sentence for a term longer than any actual term.

[81] I have taken note of the requirement in subsection 36(3) that where I pass a custodial sentence for a term longer than is commensurate with the seriousness of the offence, I am required to state in open court that it is my opinion that subsection (2)(b) applies and explain to the offender why the sentence is for such a term.

[82] Charles Matthew O'Brien Frederick, in keeping with section 36(3) of the Penal System Reform Act, you are hereby advised that the Court is of the opinion that subsection 36(2)(b) of the Act applies. Accordingly, I must also inform you that the Court is of the view that custodial sentences for an indeterminate period, namely, concurrent sentences of imprisonment for life should be passed in respect of these 2 violent manslaughter offences for the following reasons:

1. This is a horrendous double killing of 2 householders where death was caused by a firearm in the course of a home-invasion where the facts are on the borderline of murder and where there are no mitigating features;
2. Both offences in this case are so grave and so serious that by their very nature they warrant very long sentences;
3. Additionally, the Psychological Report discloses and the Court is satisfied that you are a candidate for immediate psychotherapeutic intervention aimed at addressing your numerous problematic personality features;

4. Given your problematic adult anti-social personality features as well as your poly-substance abuse and pattern of serious offending and recidivism, in the absence of such an intervention, the Court is also satisfied that there is every possibility of your continuing to be a danger to the public for a period which cannot reliably be estimated;
5. The consequences of both these offences have been especially injurious to the family of the 2 deceased victims who are still struggling come to terms with the magnitude of their loss;
6. In addition to the necessity of protecting the public from serious harm from you, the imposition of concurrent life sentences for these 2 most heinous offences will also operate as a public condemnation of your unlawful conduct and reflect the public abhorrence which Barbadians and the wider international community feel for the horrendous circumstances of these double killings.

[83] **Your expressions of remorse:** I have taken into count the several expressions of remorse which you have made to the family, to the Probation Officer, the Prison Psychologist as well as to the Court and the letters of remorse written to the investigating officer and to the family which were read into the record by Defence Counsel on July 6th, 2012.

[84] However, despite your numerous apparently heartfelt expressions of remorse and regret, as I have already stated, given the fact of your poly substance abuse, your anger management issues, the problematic features of your personality which put you at increased risk for potential violence, your extreme history of delinquent and anti-social behavior, your demonstrated recidivism and pattern of offending coupled with the fact that these double killings are so violent and the circumstances in which they were committed so horrendous, no amount of remorse and regret can operate to reduce the life sentences which the Court finds to be fully justified in this matter.

[85] **No discount allowed for guilty pleas since both pleas were inevitable :** Defence Counsel, Mr. Gordon urged the Court to have regard to what he said were the early guilty pleas in this case. On the other hand, the learned Director of Public Prosecutions submitted that you have obtained the maximum leniency you should get under the law, by reason of your having been convicted only of manslaughter.

[86] The Court has had regard to the case of ***Oral Andy Devine Cummins (Criminal Appeal No. 56 of 1995 unreported decision of Chief Justice Simmons -dated July 13, 2004)*** where the Barbados Court of Appeal found that no question of a discount for the guilty plea arose in that case where the accused was sentenced to life imprisonment after having confessed and subsequently pleaded guilty to the kidnapping, rape and wounding with intent of a young girl.

[87] Citing the English authorities of ***Morris (1988) 10 Cr. App. R. 216*** and ***Landy (1995) 16 Cr. App. R. 908***, Chief Justice Simmons further stated that where an offender has been caught red-handed and a guilty plea is inevitable, the usual discount may be reduced or even lost.

[88] In the current case, while you were obviously not caught red-handed, the Court considers that your guilty pleas to this double manslaughter were inevitable in view of your having similarly confessed to the killings and pleaded "not guilty" to the capital offences of double murder for which you were indicted.

[89] In the circumstances, it is my view that your pleas were inevitable and no question of a discount for your guilty pleas can arise in the circumstances of this case.

[90] **Time spent on Remand:** I have taken into account the fact that because a life sentence is by its very nature, a custodial sentence for an indeterminate period, you will gain no credit for the 330 days which you have to date spent

on remand prior to sentence.

[91] In spite of this fact and as I have repeatedly stated, given the fact of your poly substance abuse, your anger management issues, the problematic features of your personality which put you at increased risk for potential violence, your extreme history of delinquent and anti-social behavior, your demonstrated recidivism and pattern of offending coupled with the fact that these double killings are so violent and the circumstances in which they were committed are so horrendous, the imposition of a sentence of imprisonment for life is fully justified in this case.

[92] **The Life Sentences and s.15 of the Constitution:** I have taken into account the fact that sections 76-78 of the *Constitution of Barbados* establish a Privy Council and prescribe the circumstances under which the prerogative of mercy may be exercised whereby, persons on whom a punishment has been imposed may be pardoned, granted a respite, have their sentences remitted or have a less severe form of punishment substituted for that imposed by a Court for an offence.

[93] I have also examined rule 42 of the *Prisons Rules, Cap. 168* which facilitates the 4-yearly review by the Governor-General for remission purposes, of all prisoners serving a term of imprisonment exceeding 4 years.

[94] Section 53 of the *Prisons Act, Cap. 168* also provides for the conditional release on a supervision order of any person serving a term of imprisonment for life.

[95] In the light of the foregoing, I am accordingly satisfied that the concurrent life sentences which I propose to impose on you will not violate your right under section 15 of the *Constitution of Barbados* not to be subjected to inhuman or degrading punishment.

[96] **Concluding Remarks & Order of the Court:** Charles Matthew O'Brien Frederick, in accordance with the Court's powers under the *Penal System Reform Act* and for the reasons which I have earlier outlined, I hereby sentence you to imprisonment for life on Counts 1 and 2 respectively. Both sentences will run concurrently and will commence with immediate effect.

[97] This is the order of the Court.

Maureen Crane-Scott
Judge of the High Court
2012-07-30