

## BARBADOS

*Indictment No: 114 of 2011*

### THE QUEEN V. DESMOND GARRETT YARD

*Appearances:*

*Mr. Anthony Blackman for the Crown*

*Mr. Tariq Khan in association with Miss. Carol Ann Best for the accused*

#### SENTENCING JUDGMENT

*Desmond Garrett Yard,*

- [1.] **Background:** On Thursday August 14<sup>th</sup>, 2014 following a full trial, a jury of your peers found you “not guilty” of murdering Martina Gittens, but convicted you instead of manslaughter by reason of provocation.
- [2.] **The Case for the Crown:** The case for the Crown at the trial was that you and the deceased, Martina Gittens, had been in a stormy 3 year relationship which, according to you, had been on and off for some time due to your constantly arguing about different things. In May 2008, a young baby, Zaria Gittens, a daughter, was born to yourself and the deceased. The child developed an apparent ear infection and on the evening of October 9<sup>th</sup>, 2008, you both journeyed to the Fast Track Clinic at the Sir Winston Scott Polyclinic in your brother’s vehicle to take the child to the doctor.

[3.] According to the Crown's case, on the way to the Fast Track Clinic, a quarrel broke out in the vehicle between yourself and the deceased who had been speaking to a third party on her cellphone. According to the Crown's case, you initiated the quarrel and reached into the back seat where Martina Gittens had been sitting in an effort to take the cellphone away from her.

[4.] Your brother who had been driving the car, told the Court that he had been forced to place his hand on the left side of the seat to stop the scuffling and the quarrel.

[5.] The deceased's best friend, Maria Dixon who had also been travelling in the car, told the Court that the deceased had answered a call which had come through on her cellphone and that while she had been talking on the phone, you had started quarrelling. She also told the Court that you had started reaching back to snatch the phone from Martina and had also told the deceased: "*this pussy is still mines.*"

[6.] The Court was told that while at the Fast Track Clinic, the deceased had taken the child inside to see the doctor, leaving the baby bag in the waiting area near to where her friend Maria Dixon had been sitting. According to Maria Dixon, she saw you take up the bag and you appeared to go into the bag.

[7.] Maria Dixon told the Court that she had subsequently looked inside the bag and had realized that one of Martina's three cell phones appeared to be missing. According to Maria Dixon, she had then questioned you about the phone and you denied having it and suggested to her that Martina would probably have it with her.

[8.] The Court was told that after the child had been seen by a doctor, the deceased had returned to the waiting area and had a conversation with her friend, Maria Dixon concerning the whereabouts of her cell phone.

[9.] The deceased then approached you outside of the Polyclinic and asked you for her cellphone. She accused you of having taken her cellphone out of the baby bag and had also threatened to call the police if you did not return the cellphone.

[10.] The Court was told that the incident outside the Polyclinic was so loud that a security guard had asked both of you to behave, failing which you would both be asked to leave the premises. Crown witness, Maria Dixon also told the Court that the deceased had then said that she was going to call the police and that you had responded: *"Go on and call them because I 'gine kill you tonight."*

[11.] Your brother, Curtis told the Court that during the altercation outside the Polyclinic, the deceased had threatened to call police and you had told the deceased: *“You call the police I will get lock up for you.”*

[12.] He also told the Court that following the altercation outside the polyclinic he had given you \$10:00 and had told you to make your way back home to St. Thomas. The Court was informed that the reason he had done so was because he had wanted to avoid any more noise in the car and didn't want to carry the two of you back together.

[13.] At the trial, the Crown produced a Movement Statement, “Exhibit B”, which you had freely dictated to police shortly after your arrival at the police station on October 13<sup>th</sup>, 2008 in which you described the nature of your relationship with Martina Gittens. You had also given police an account of the altercation which had occurred in the car and at the Fast Track Clinic between yourself and the deceased on the evening of October 9<sup>th</sup> 2008 and you explained your whereabouts on the night of October 9<sup>th</sup> and the early morning hours of October 10<sup>th</sup>, 2008. The portions of your Movement Statement describing the status of your romantic relationship with the deceased read as follows:

*“The most recent relationship I was involved with was Martina Gittens of Vaocluse Tenantry, Shop Hill, St. Thomas. I have known her for all my life and she just lives up the hill from me. Martina and I were*

*talking for about 3 years and became intimate around this time...Our relationship was on and off because we were also arguing about different things. Sometime last year, Martina got pregnant for me and about one month into the pregnancy we separated and Martina got involved with another man. During this period I was working in St. Lucy and I thought it convenient to remain in St. Lucy, instead of going back in Shop Hill. I ended up living in St. Lucy for about 3 months. While living in St. Lucy, I got a telephone call from Martina that she wanted me to come back and try to work things out. At this time, I was involved in another relationship but I ended it and went back to Shop Hill, St. Thomas.*

*All this time now the relationship between Martina and me was good as the baby was soon getting ready to born....one month after giving birth to little Zaria, Martina's sister Cindy...told their mother that I tried to interfere with her. Martina asked me about it and I told her it was not true. I was then told by Martina that her mother does not want me back at her house. I stopped going into the house but if Martina wanted anything, I would take it for her and she would come to her front door and I give her whatever I have for her...*

*Things started to get more difficult and the relationship became more strained to the point that the relationship came to an end about 2 weeks ago. Martina told me that she was talking to someone else but only as a friend. I cannot remember his name..."*

[14.] The Crown also produced a written Statement, "Exhibit C", which police say was freely and voluntarily obtained from you in accordance with the *Judges Rules* during the formal interview which was conducted with you on October 14<sup>th</sup>, 2008. Police investigators also attributed a number of oral statements to you during the police investigations on the 13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> October, 2008 some of which, the Crown says, amounted to admissions.

[15.] According to the Crown's case, the written statement which you dictated to police was read over to you and you said that it was true and correct and signed your name to it. In the written Statement you described the events leading up to argument in the car on the way to the Fast Track Clinic and the altercation which occurred with the deceased outside of the Polyclinic.

[16.] You also gave an account of what happened between yourself and Martina in the hours immediately prior to your having thrown, what may be described as a lighted Molotov cocktail into her bedroom window. The statement reads in part as follows:

*“She name get call and two of we went in and the doctor said only one in the room and she gave me the baby bag and I take her phone out of the bag. I went outside trying to get it unlock to find Desiree number. After she come back outside saying that I was a pauper and then she start cursing and getting on bad. She tell me she ‘gine call the police for me and make sure I get lock up or I have to give she back either \$300.00 or \$350.00 for the phone.*

*My brother come out and give me \$10.00 and tell me to go and caught the bus because he ain't carrying me back down because he ain't want no noise. I walk straight down by the terminal and throw the phone in the wharf. I went straight down and catch the minibus and went straight home.*

*I call Martina and apologize about the phone and I tell her I ‘gine give back her money for the phone. We start talking and stuff and I told her that I want to see her. She tell me that I got to wait till everybody go in the bed if I want to talk to she or see she. Sometime after twelve or something, I can't really remember the time but she call me back and tell me that Natalie gone in she bed*

*so give she 'bout ten minutes and then come. I went up deh and walk straight in de house and I sit down on she bed and I start to talk.*

*She tell me that it is time to leave because she don't want she mother to catch me in the house. She then told me things like she don't want me and that if I don't give she another man will give she. I tell she that if I got my last cent in my pocket I does give she and make she right. She asked me what that have to do with it. We began to argue and she tell me to leave.*

*I leave and I went home and my head was hot. I take up a pep bottle with gas inside of it and I push piece of rag through the mouth of it. I take up a cigarette lighter from home and I went through the back of my house and I end up by she. I come up through by Ms. Byer and I went over she paling. I light the rag and I pelt the bottle through Martina bedroom window. I ran away and went back home. I skate down when I was running away. I went home for a 'lil while and then I went back up there and pretend that I ain't know what was going on."*

[17.] The Crown's case was that on Wednesday October 15<sup>th</sup>, 2008 you directed Sgts. Gibson and Dottin to Shop Hill St. Thomas where you engaged in a "pointing-out exercise". You pointed to an area and said, "*the window was out there.*" You also pointed to a paling and said, "*I tek my time and went over there.*" You then pointed to an area to the rear of the burnt remains of Deborah Gittens' house and said, "*I skate down here*". You pointed out an area in the said bedroom and said, "*the pep bottle was here.*" You further directed the officers to the clothing which you wore on the night in question.

[18.] The medical evidence showed that Martina Gittens was seen at the Accident and Emergency Department of the Queen Elizabeth Hospital on October 10<sup>th</sup> 2008. She was found to be suffering from extensive partial thickness burns with multiple blebs to her entire back. She was admitted to the hospital and died of her injuries on 14<sup>th</sup> October, 2008. Martina Gittens' cause of death was attributed to 40% full and partial thickness flame burns with multiple organ failure.

[19.] **The Case for the Defence:** The case for the Defence at the trial was quite simply that you did not murder Martina Gittens because you were home asleep when the fire broke out and had an alibi for the time of the offence.

[20.] The Defence relied on the contents of the Movement Statement, "Exhibit B", in which you outlined your alibi as follows:

*"...I got home about 8:00 pm or after 8:00 pm. I went straight in my bed. I did not tell anyone that I was home, I went and lay down and drop off to sleep. Sometime in the early hours of the morning, I heard a knocking on my door. I got up, look around but I did not see anyone. I did not hear anyone call out for me. I went outside looked around and when I looked up, I saw fire on top the hill. I ran back in my house, put on a short pants and a T-shirt and run up the road barefoot."*

[21.] The Defence case at the trial was that the written statement, "Exhibit C", had not been freely and voluntarily dictated by you, but had been fabricated and

prepared in advance by police using information which they had obtained from your Movement Statement. The Defence case also was that the written statement, “Exhibit C”, should be rejected due to the fact that you were held in oppressive conditions at the Holetown Police Station where you were denied your rights and tortured, ill-treated and forced through threats and physical violence to sign it.

[22.] **Basis of jury’s verdict and Court’s findings for sentencing purposes:**

Given the state of the evidence and the respective cases for the Prosecution and the Defence at the trial, the possibility of a verdict of manslaughter by reason of provocation was left for the jury’s consideration. Out of an abundance of caution, the jury was also given a direction on the possibility of a verdict on the basis of unlawful act manslaughter.

[23.] Following the return of its manslaughter verdict in this case, the jury informed the Court for purposes of the record, that it had found you “not guilty” of murder, but “guilty” of manslaughter by reason of provocation.

[24.] **Your Criminal Antecedents:** Enquiries with the Criminal Records Office of the Royal Barbados Police Force reveal that you have no previous convictions and are otherwise not known to this Court.

[25.] **Your Pre-Sentence Report:** Following your conviction and as required by the *Penal System Reform Act, Cap. 139*, this Court ordered the preparation of a Pre-Sentence Report. The Report, which was prepared by Probation Officer, Ms. Denise Agard, was read into evidence on Thursday October, 9<sup>th</sup> 2014 by Ms. Linda-Kay Robinson and has since been reviewed by the Court.

[26.] The Court has considered your Pre-Sentence Report which provides valuable insights 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 Victim Impact Statement from the mother of the deceased, Ms. Deborah Gittens and the deceased's sister, Ms. Natalie Gittens.

[27.] The Report revealed that you are the fifth of six children born to the union of your parents, Athelbert and Myrteen Yard. Your mother indicated that you met your developmental milestones without incident and presented no behavioral challenges. According to her, at the age of 12, you were left in the care of your father when she migrated to the United States. She stated that she received no adverse reports about your behavior during the ensuing years.

[28.] She considered that that the matter which has brought you before the Court appears to be out of character since, in her view, you are someone who avoids conflict and aggressive behavior.

[29.] For his part, your father described you as a helpful, quiet, dedicated dependable and “easy-going” individual who never presented any behavioral problems. He said that the two of you shared a close bond and he had been shocked upon learning of the offence, stating that your actions were out of character.

[30.] Your maternal aunt, Mrs. Elaine Walcott, who resided with you during your mother’s absence told the Probation Officer that your behavior and general conduct was good and your interactions within the household were amicable. She too was shocked upon learning of your involvement in this matter.

[31.] Mr. Curtis Prescod, your older brother, described you as jovial, helpful and one who possessed a quiet disposition and avoided confrontation.

[32.] The Report revealed that you experimented with smoking marijuana at age 17 but had been deterred from further use of the substance by its negative effects on a friend. You also informed the Probation Officer that you do not smoke illegal substances or cigarettes, but that you drink alcohol socially.

[33.] Your ex-wife, Mrs. Gail Powers-Yard, revealed that the two of you were married sometime in 2000 and that the marriage lasted approximately four years. She disclosed that the marriage was satisfactory and there were no

forms of abuse. According to her, you were usually the peacemaker in the family and always chose to avoid any confrontation with her. She informed the Probation Officer that you are the father of her 13-year-old daughter with whom you have a good relationship. She further expressed the view that you are not an aggressive person and that your actions were out of character.

[34.] Ms. Cynthia Carrington, who has known you for approximately 20 years and with whom you share two children ages 18 and 15, asserted that you have a good relationship with your children and are a good father to them.

[35.] Members of the Shop Hill and Vauclose communities in St. Thomas recalled that you were raised in the district and are well known and loved. They describe you as a helpful individual and expressed sadness for the loss of life and your association with the offence.

[36.] Prison officials indicated that your behavior during your period on remand has been exceptional. They have also remarked that you have been compliant and respectful of authority and this has led to your being employed as a food orderly for the past 2 years on the building where you are housed.

[37.] As to your education and employment record, the Report revealed that you were educated at the Sharon Primary School and subsequently at the now

defunct Buxton School. You were unsuccessful in gaining a place at a secondary school but were accepted at the now defunct St. Andrew and Holy Innocent Composite Schools.

[38.] You admitted to the Probation officer that you did not apply yourself to your studies during this period of schooling and left school at the age of 16 without certification. Upon leaving school you worked as a labourer for 3 years and then in the areas of masonry and tiling. You worked as a self-employed painter for 15 years until your remand in 2008.

[39.] You stated that you are remorseful that Ms Gittens lost her life and for the traumatic events which occurred including your daughter's physical injuries.

[40.] Victim Impact Statements: The victim's mother, Ms. Deborah Gittens, stated that her daughter was the second of her six children and described her as a caring, loving individual. She characterized their relationship as good and indicated that her daughter got along well with the other members of the household.

[41.] She stated that she missed her daughter and mentioned the emotional turmoil that her death has brought to the family. Ms. Gittens described your actions as

cruel and was strongly of the view that the Court should impose the maximum sentence for the offence.

[42.] Ms. Natalie Gittens, the victim's sister, who has been awarded custody of Martina Gittens' children, stated that her sister's death and the loss of their house in the fire plunged the family into despair and forced the family to start their lives afresh. She stated that the children are dealing with the loss differently and at present each child is undergoing counseling at different levels. She also further indicated that she has also commenced counseling since there are emotional scars to be addressed.

[43.] The Report concluded with the Probation Officer's assessment that you pose a low risk of reoffending.

[44.] **Discussion:** It is now for the Court to 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*.

[45.] Reasons for imposing Custodial Sentence - Section 35(4): As required by section 35(4) of the *Penal System Reform Act* and after considering the evidence which was adduced at the trial and the manner in which this offence was committed, together with your 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.

[46.] As this is a case where you were found not guilty of murder but guilty of manslaughter by reason of provocation, the Court sought firstly to establish the basis for your sentencing by adverting 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 (date of decision 19 June 2009)*.

[47.] The Court kept in mind that as the sentencing judge, I am accordingly obliged to make a number of assumptions in your favour by way of mitigating the seriousness of the offence.

[48.] Assumptions: Following 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.

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

- a) I have accepted that you and the deceased, Martina Gittens shared an intimate relationship for approximately 3 years, but that, as disclosed in your Movement Statement, the relationship was a stormy one and was an on and off relationship due to your always arguing about different things;
- b) I have accepted that as disclosed in your Movement Statement, you and the deceased separated approximately one month following her having become pregnant for you, when she got involved with another man;
- c) I have also accepted as disclosed in your Movement Statement, that after a 3 month separation during which you moved to St. Lucy and became involved with someone else, that the deceased had telephoned you and had asked you to come back and to try to work things out and you had ended your new relationship and gone back to live in Shop Hill, St. Thomas;
- d) I have accepted that following your return to Shop Hill, St. Thomas, your relationship with the deceased was rekindled and was, in your words, “*good as the baby was soon getting ready to born*”;

- e) I have accepted that approximately one month following the birth of your daughter, Zaria in May 2008, you had been falsely accused of interfering with Martina's sister as a result of which you had been forbidden by Martina's mother from entering the home;
- f) I have also accepted that, as disclosed in your Movement Statement, that your relationship with had become difficult and more strained so much so that, according to you, the relationship had ended approximately 2 weeks prior to the incident when Martina told you that she was talking to someone, but only as a friend;
- g) I have accepted that on the evening of October 9<sup>th</sup>, 2008 whilst you were both passengers in a car driven by your brother who was taking you to the Fast Track Clinic with baby Zaria to see a doctor, you and Martina had quarreled over her having been on her cell phone in conversation with a man;
- h) The Court has also accepted that whilst still in the car on the evening of October 9<sup>th</sup>, 2008, you had been trying to snatch the phone from the deceased and, according to Maria Dixon, had in the Court's view, jealously told her that: "*this pussy is still mines;*"

- i) The Court has further accepted that later on the evening of October 9<sup>th</sup>, 2008 whilst outside the Fast Track Clinic, a second altercation occurred between yourself and Martina Gittens in which she accused you of having taken her cell phone out of the baby bag and had threatened to call the police if you did not return the phone;
- j) The Court has also accepted as disclosed in your Movement Statement, that during the altercation she had called you “*a pauper*” and had also been cursing and getting on bad;
- k) The Court has accepted that on arriving home from the Fast Track Clinic later that night, you had called Martina Gittens and apologized to her about the phone and had offered to reimburse her for the cell phone. You also told her that you wanted to see her and made arrangements with her to visit her house later that night or in the early morning hours after everyone had gone to bed;
- l) I have also accepted that after receiving the call from Martina informing you that her sister had gone to bed and that it was safe to enter the house, you entered the house, went into Martina’s bedroom and started to talk with her;

- m) The Court has accepted (as disclosed in your written Statement) that after talking with Martina she had told you that it was time to leave because she didn't want her mother *"to catch you in the house"*;
- n) The Court has also accepted that Martina also told you that she *"didn't want you"* and that *"if [you] don't give her another man will give her"*;
- o) The Court has further accepted that you then told the deceased that even if you had your last cent in your pocket, you would give her and make her right, to which, according to "Exhibit C", the deceased asked you *"what that had to do with it"*;
- p) The Court accepts that you and Martina then began to argue once again and that she had asked you to leave the house;
- q) The Court accepts that (as disclosed in your written Statement) you left the house and went to your home nearby and that (in your words) your *"head was hot"*;
- r) The Court has also accepted that provoked by what you must have regarded as Martina's rejection of you and the fact of your steadily unraveling relationship despite your efforts at reconciliation, you took

up a pep bottle with gas inside of it, pushed a piece of rag into the mouth of the bottle and left your home with a cigarette lighter headed for Martina's house;

- s) You approached the house through the back of your house, through by Mrs. Byer's house and entered the yard over the paling. After lighting the rag, you pelted the pep bottle of gas through the bedroom window and ran back home.

[50.] Applying the *Suratan* guidelines, the Court has next assumed that your loss of self-control in the circumstances 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. Finally, in keeping with *Suratan*, the Court has assumed that the circumstances surrounding your actions on the night in question were such as to make your loss of self-control sufficiently excusable to reduce the gravity of your actions from murder to manslaughter.

[51.] In assessing the seriousness of the manslaughter offence and the degree of provocation in this case, the Court has taken into account the following aggravating factors, namely:

- a) Although it is clear from the foregoing facts and circumstances that your 3 year romantic relationship with Martina Gittens had always been stormy and had (according to you) ended 2 weeks previously, the deceased's behaviour in the hours leading up to your having left her home following your argument and returned and deliberately and recklessly thrown a lighted gas bottle through her bedroom window, clearly presented no physical threat to you.
- b) While it is clear that your feelings may undoubtedly have been hurt by the fact that she had told you that she no longer wanted you and was rejecting your affections for those of another man, the degree of provocation such as it was in this case, cannot be regarded as particularly high;
- c) Added to this, the Court is satisfied that while you may have left the deceased's bedroom, provoked in the sense that you were angry and hurt and that your *'head was hot'*, your actions thereafter in deliberately taking up a pep bottle filled with gas, returning to Martina's house through the back of your house and over the paling and recklessly tossing the lighted gas bottle through her bedroom window in a houseful of sleeping persons, were, in the Court's view, not spontaneous but were instead, the calculated and deliberate acts of a man bent on exacting maximum revenge;

- d) The Court is also satisfied that while your 3 year relationship with Martina Gittens had always been stormy and was, in your words, an “*on and off*” *relationship*, the Court is of the view that Martina Gitten’s most recent acts of verbal provocation and rejection which occurred inside her bedroom where she had told you that she no longer wanted you and asked you to leave the house, were not of such a degree as would significantly reduce your overall culpability for this most dastardly crime;
- e) Additionally, the Court has taken into account as a factor which has significantly aggravated this offence, the fact that you returned to the house within a matter of minutes and threw a lighted gas bottle through an open bedroom window in the dead of night and at a time when the occupants were sleeping and particularly vulnerable. In the circumstances, the Court is satisfied that your culpability for your deliberate and reckless actions in this case is extremely high;
- f) Finally, the Court has taken into account as yet another aggravating factor in this case, your post-offence behavior and the fact that as is disclosed in “Exhibit C”- your written statement, after pelting the bottle through Martina’s window, you ran back home and “...*went home for a little while and went back up there and pretended that [you] did not know what was*

*going on.*” The Court found your post-offence behavior particularly damning since you were the one who started the fire. You were also well aware that your actions could not only have caused serious injury, not only to Martina and the other occupants of her bedroom, but you must have foreseen that the fire could have spread and seriously injured the other occupants of the house who were asleep at the time. That you could have returned to the burning house and calmly watched as it was consumed by the fire which you had started, in this Court’s view, showed a callous and reckless disregard for human life and in the Court’s view greatly aggravated the seriousness of this offence.

[52.] In summary, the Court is satisfied that was a very grave case of manslaughter well beyond the threshold for a non-custodial sentence with numerous aggravating factors and in which the only mitigating factor of the *offence* was the fact that, faced with what would have appeared to you to be another act of rejection on the part of Martina Gittens, you were provoked and lost your self control and acted in the deliberate and reckless manner disclosed on the evidence.

[53.] The Court next approached the matter of sentence by adverting to section 6 of the *Offences Against the Persons Act, Cap. 144* which stipulates that the

permitted maximum custodial sentence which may be imposed on any person convicted of manslaughter is imprisonment for life.

[54.] However, as is clear from case law including the manslaughter guidelines established by the Barbados Court of Appeal in *Pierre Lorde v The Queen* (2006) 73 WIR 28, the statutory penalty of imprisonment for life is to be reserved only for the most serious manslaughter offences.

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

[56.] 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.

[57.] At paragraph [36] of *Pierre Lorde*, the Barbados Court of Appeal recognized that there may be from time to time, the odd case whose special or exceptional facts fall outside the established guidelines and, clearly stated that nothing in the Judgment should be construed as fettering the discretion of Judges to deal with those special or exceptional cases as the justice of the case requires.

[58.] Keeping the case of *Pierre Lorde* firmly in mind, the Court took into account that while no gun or intrinsically dangerous weapon was used to bring about death, the evidence disclosed that Martina Gittens' cause of death was attributed to 40 % full and partial thickness flame burns with multiple organ failure.

[59.] Additionally, it was clear that Martina Gitten's death was neither quick nor instantaneous. She had initially been seen at the Accident and Emergency Department of the Queen Elizabeth Hospital on October 10<sup>th</sup> 2008 and found to be suffering from extensive partial thickness burns with multiple blebs to her entire back. She was admitted to the hospital and ultimately died of her burn injuries and multiple organ failure approximately 4-days later on 14<sup>th</sup> October, 2008.

[60.] The Court considered that such a terrible and painful death, recklessly brought about by your deliberate and reckless actions in throwing a lighted gas bottle through her bedroom window, placed this offence firmly on the borderline of murder and near the top of the manslaughter scale.

[61.] Ultimately, the Court was satisfied that given the special and exceptional facts of this case, the parameters currently provided for in the four Guidelines coupled with the suggested range of sentences set out in the *Pierre Lorde* Guidelines as currently framed are woefully inadequate to enable the Court to do justice in this case.

[62.] The Court is also satisfied that the Guidelines, with their obvious bias towards deaths caused by a firearm, do not appear to have anticipated a terrifying and horrendous death by fire such as has been disclosed by the special and exceptional facts of this case and which must fall near the top end of the manslaughter scale.

[63.] Accordingly, having regard to the flexibility provided within paragraph [36] of *Pierre Lorde* and having regard also to the special and exceptional facts of this case and doing the best that it can do within the framework of the existing *Pierre Lorde* Guidelines which may be in need of urgent revision, the Court

in the unfettered exercise of its sentencing discretion, established **30 years** as the appropriate starting point for determining the length of your sentence.

[64.] **Length of the Custodial Sentence - Section 36:** Having considered the gravity of the offence and having 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.

[65.] 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.

[66.] In his mitigation on your behalf, Defence Counsel, Mr. Tariq Khan drew attention to your favourable Pre-Sentence Report and the opinions expressed by numerous persons including your character witness, Dave Parris, who were of the view that your involvement in the offence were out of character.

[67.] He drew attention to your current attitude to the offence and to the remorse which you had expressed for the loss of Miss. Gitten's life. He submitted that your actions had been spontaneous and not premeditated and pointed to the

Probation Officer's assessment that you are a low-risk offender and that you pose no threat to the community.

[68.] He urged the Court to be lenient in the imposition of a sentence and to pay attention to sentences (including suspended sentences) which had been imposed by other High Courts for other manslaughter offences. He also reminded this Court of a suspended sentence which this Court had imposed in *The Queen v. Craig Prescott, Ind No. 53/2010*.

[69.] Mr. Khan cited the decision of the English Court of Appeal in *Attorney General's Reference (Nos 74, 95 and 118 of 2002) (Suratan and others) [2003] 2 Cr. App. R (S) 42*; and the Barbados Court of Appeal decisions in *Pierre Lorde v. The Queen Crim App. 11/2003* and *Griffith v. The Queen Crim App. No 6/2007*.

[70.] In his reply, Principal Crown Counsel, Mr. Anthony Blackman drew the Court's attention to an extract from Guidelines issued in July 2011 by the **English Sentencing Guidelines Council** in relation to *Manslaughter by Reason of Provocation* and which made reference to the *Suratan* principles and which, he submitted, could usefully be considered by the Court in analyzing the seriousness of this case.

[71.] Turning to the aggravating factors, Mr. Blackman submitted that your actions that night were clearly reckless and had exposed an entire family to the risk of death or at minimum to the risk of serious injuries.

[72.] He pointed out that your actions were motivated by revenge and anger and had also been perpetrated at night when the occupants of the house were asleep and when escape would have been difficult and challenging.

[73.] He also highlighted the fact that you had used an accelerant and created what he termed, a fire bomb, which not only caused Martina Gittens' death but also destroyed the family's house.

[74.] Mr. Blackman cited the following authorities, namely *Griffith v. The Queen, Barbados Court of Appeal No. 6 of 2007*; *Troy Anderson Mascoll v. The Queen Barbados Court of Appeal No. 14 of 2011*; *Padmore v. The Queen,, Barbados Court of Appeal No. 18 of 2005* and *Pierre Lorde v. The Queen, Barbados Court of Appeal No. 11 of 2003*.

[75.] Mr. Blackman identified what he said were the only mitigating factors in this case, namely: (i) the fact that you were provoked and lost your self control and (ii) your expression of remorse.

[76.] He urged the Court to balance the aggravating and mitigating factors and as required by the *Penal System Reform Act* and after considering guideline 3 of the *Pierre Lorde* guidelines, to go beyond the suggested range of sentence in *Pierre Lorde* and impose a sentence commensurate with the seriousness of this offence.

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

- The fact that you were provoked and lost your self control;
- The fact that you have no previous convictions and that this is your first offence;
- The remorse which you have expressed for your actions as evidenced by your comments to the Probation officer who prepared the Pre-Sentence Report and your public expression of remorse in the course of these proceedings;
- The Court has also taken into account your positive Pre-Sentence Report which assesses you as posing a low risk of reoffending and the

evidence of the character witness who provided evidence on your behalf.

[78.] **Time spent on Remand:** According to Bentley Boucher, Prison Officer I, you were admitted to prison on October 16<sup>th</sup> 2008 and as at October 9<sup>th</sup>, 2014 you have spent a total of 2,185 days [i.e. 5 yrs 360 days] on remand awaiting the trial and final disposition of this matter.

[79.] To this period, the Court has added the additional 50 days that have elapsed since October 9<sup>th</sup>, 2014 up until today.

[80.] In keeping with the decision of the Caribbean Court of Justice in the case of *Romeo DaCosta Hall v The Queen*, you will be given full credit for the now 2,235 days [i.e. 6 years 45 days] that you have to date spent on remand awaiting your trial and the final disposition of this matter.

[81.] **Order of the Court:** *Desmond Garrett Yard*, you are hereby sentenced to a term of imprisonment of **25 years** for this offence to commence with immediate effect.

[82.] In keeping with the decision of the Caribbean Court of Justice in the case of *Romeo DaCosta Hall v The Queen*, there will be deducted, the full period of 2,235 days [i.e. 6 years 45 days] which you have to date spent on remand. In

the result, you will be required to serve the remaining **18 years 320 days** in custody for this offence.

[83.] During your period of incarceration, and with the aim of your rehabilitation, you are ordered to undergo a psychological assessment and to participate in such interventions, counseling and programs as may be recommended by the Prison Psychologist, to assist you in understanding your challenges with rejection and possessiveness and controlling your anger and managing your interpersonal relationships. You are strongly urged to participate fully in these programs and make full use of the opportunity that they offer in dealing with your problems.

[84.] The Superintendent of Prisons is requested to make the necessary arrangements to ensure that this order is carried into effect.

[85.] This is the order of the Court.

Maureen Crane-Scott  
Judge of the High Court  
2014-11-28