

BARBADOS

Indictment No: 74 of 2014

THE QUEEN v. BERTRAM OMAR CARTER

Appearances:

Mr. Lance Applewhaite for the Crown

Mr. Dennis Headley in association with Mr. Dave Cumberbatch for the accused

SENTENCING JUDGMENT

Bertram Omar Carter,

[1.] On Monday, October 6th, 2014 you were arraigned and pleaded “not guilty” to the murder of Christopher Augustine Joseph, but “guilty” instead to manslaughter.

[2.] **The Facts:** The matter was adjourned to Wednesday, October 22nd, 2014, when Crown prosecutor, Mr. Lance Applewhaite outlined the circumstances surrounding the manner in which the deceased, Christopher Augustin Joseph was bludgeoned to death by you with a piece of pipe on a Bay Street beach in the early morning hours of December 12th, 2008.

[3.] Mr. Applewhaite told the Court that the deceased, a heavy drinker who frequented the bars in Nelson Street the City, had been in the habit, after a night of drinking, of proceeding to a shed on a beach in the Bay Street area to get some sleep.

[4.] In the early morning hours of December 12th, 2008, the deceased, as was his wont, left a shop in Martindales Road and walked to Nelson Street before finally proceeding to his usual spot under the shed on the Bay Street beach to get some rest.

[5.] The Court was told that you came across the sleeping man and decided to rob him. To this end, you armed yourself with a piece of pipe which you had found on the beach in an area where a boat had been under construction.

[6.] You then approached the deceased and proceeded to search his pockets. The deceased awoke and started to kick at you. You stumbled backwards and then launched a vicious attack on the unarmed man with the pipe you were carrying, beating him about his chest, shoulder and ribs.

[7.] The hapless man collapsed on the ground where you stood over him and continued to rob him.

[8.] As you were in the act of robbing the deceased, two passersby, Arlie Todd and Anderson Granderson, who had been walking along the beach at the time, heard the sounds of someone moaning. On approaching the direction of the sounds, they saw you standing over the deceased and immediately recognized you by your alias "Digga". The Court was told that they had no difficulty recognizing you as they had been about 10 feet away from you and the area had been illuminated by lights from a nearby building.

[9.] Later that morning, police were informed about the presence of a body on the beach and investigations commenced.

[10.] The deceased man was pronounced dead at the scene at 9:30 a.m. later that morning. A post mortem was subsequently carried out by Pathologist, Dr. Stephen Jones who attributed death to traumatic chest injuries with hemorrhage and shock.

[11.] During the investigations, police interviewed the two passersby, Todd and Granderson, who had seen you standing over the deceased. The witnesses subsequently showed police the area on the beach where they had seen you attacking the deceased. The area which they pointed out was the identical spot on the beach where the deceased's body had been found.

[12.] Subsequently, police took the two witnesses, Todd and Granderson, on a drive around Bridgetown to see if they could locate the person who they had recognized as "Digga". Whilst travelling along Crumpton Street, one of the witnesses spotted you walking along Crumpton Street going in the direction of Roebuck Street. Police gave chase and caught up with you on Roebuck Street where the witness, Todd, was asked to repeat in your presence, what he had earlier told police.

[13.] In your presence, Todd told police: *"This is "Digga" here, the man I tell wunna I see hitting the man with a piece of pipe 'pon de beach."* Police then

told you of their suspicions about your involvement in the death of the deceased, Christopher Augustin Joseph and cautioned you at Rule II of the Judges' Rules.

[14.] Upon your return to the Hastings Police Station, the other passerby, Granderson, who had been in a separate vehicle and who had arrived back at the station ahead of you, identified you to police saying: "*He is the man who I see with de piece of metal down by the old fish market the morning standing over de man on the ground.*"

[15.] On being asked by police, after caution, whether you had heard what the witness, Granderson had said, you told police: "*You got the wrong man.*"

[16.] After being told of your rights to consult with an attorney-at-law and upon being cautioned, you were interviewed by police and made a number of oral statements.

[17.] In particular, after being told of police suspicions that you were the person who had inflicted injuries on the deceased, you told police: "*I hit he with de iron, but I didn't went to kill he.*"

[18.] You agreed to dictate a written statement to police admitting your involvement in the matter. The statement reads in part as follows:

"A Friday morning early, it was night time, I went 'cross Brownes Beach to rest and I see de man there sleeping. Now, I start to tap he pockets. So when I get up now and he realise that it is me over he, he start to kick me. Before I went there I tek up a piece of iron from side of where de people did building

dey boat because I say if I got out there and we had confrontation and it get out of hand, I would defend myself.

When he kick me, I like stumble, right. He get up and I hit he wid de iron, right. He drop, but not fully on de ground. He quickly get back up and I end up hitting he again. So when I give he de second blow now, he like he drop 'pon he back. So when he drop 'pon he back now, I search he pocket. All this time he did breathing.

I search he pocket and he had like \$10.00 in he pants pocket. From there I turn he over 'pon he face and I search he back pocket. I then turn he back over 'pon he back and start to leave de beach when I see a red and a dark skin man approaching the scene. They look at me and went to the man.

I had two shirts, a white shirt and a stripe. When I realise that I leave the stripe shirt 'pon the chair, I return for de shirt. I walk up there by de sports club and dispose of the iron behind there. From there, I went back on Nelson Street and then to Barbarees Hill where I does rest.

Later that day, in the evening, I went by Deanne Prentice and she tell me that a man dead on de beach, Brownes Beach and I tell she how I hit de man with an iron and tek 'way he money, but I ain't know he dead."

[19.] **Basis on which the plea was accepted:** Explaining the basis for the

Crown's acceptance of the manslaughter plea, Mr. Applewhaite told the Court that the only evidence which the Crown had as to your state of mind had come from your written statement and your oral statement to police during the investigations. He also told the Court that by operation of law, with the abolition of the doctrine of constructive malice and the felony-murder rule, a murder committed in the course of a robbery cannot now be murder and: “*...the Crown is duty bound to accept the verdict of manslaughter in this instance.*”

[20.] **Your Criminal Antecedents:** On October 22nd, 2014 also, Keeper of the Criminal Records, Police Constable No. 49 Rudy Harris, informed the Court that you have 11 criminal convictions. 5 of these convictions are for theft, 1 for wounding; 1 for assault; 1 for loitering with intent; 1 for using threatening words; 1 for causing disturbance and 1 for possession of cannabis.

[21.] **Your Pre-Sentence Report:** As required by section 37(1) of the *Penal System Reform Act, Cap. 139*, a Pre-sentence Report was ordered. The Report was read into evidence by Probation Officer, Mrs. Roseann Grace on December 12th, 2014 and has since been reviewed by the Court.

[22.] The Report has given the Court some insight into your personal and family history, your educational and employment history and your current attitude to the offence.

[23.] You are the youngest of 4 children born to your parents Jewel and Bertram Carter. Your mother describes you as a loving boy who was quiet and well-mannered throughout your development. However, the Court was told that a change occurred when you were around 16 years of age, when you started smoking marijuana and became aggressive and unmanageable.

[24.] Your marijuana use led to disharmony between you and your mother and following a fit of rage, your mother evicted you from the family home during your teenage years. Once displaced from your family home, you led a nomadic

existence with no fixed place of abode and lived at various areas throughout the island, including, Eagle Hall and Lightfoot Lane St. Michael and Porey Spring, St. Thomas.

[25.] During this period you grew dreadlocks and developed a strong dependence on marijuana and alcohol which, according to you, provided comfort for you. You eventually came into conflict with the law and were sentenced to a period of incarceration at age 21. Subsequent periods of incarceration for other offences have also negatively impacted on your personal and social development.

[26.] For a brief period between the years 2007 and 2008, your life took a turn for the better when you met a benefactor who secured part-time labour for you and assisted you with temporary accommodation. In an effort to renew your spiritual grounding, your benefactor managed to get you to attend services at the Mission House Assembly and also made efforts to heal the relationship with your mother and other relatives.

[27.] Sadly it appears, when the arrangements for your temporary accommodation came to an end, you became homeless once again and it was during this period of homelessness that the offence for which you were convicted, took place.

[28.] You attended the St. Leonard's Boys' School, but did not excel academically and left school at age 16 without formal certification. After leaving school you

earned a subsistence income working in the informal sector, selling vegetables, washing cars and various other odd jobs.

[29.] As to your current attitude to the offence, you told the Probation Officer that although you admit striking the victim, you did not intend to kill him. You pointed out to the Probation Officer that conflict with other persons in a similar situation was often a part of being homeless. The Probation Officer confirmed that being homeless was indeed fraught with issues relating to personal safety and basic survival.

[30.] **The Allocutus:** The Allocutus was also put to you on December 12th, 2014. You apologized to the Court and the deceased's family members for your past actions and also offered a general apology to anyone who needed your apology. You also asked the Court for leniency and for a chance to rebuild your future.

[31.] **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*.

[32.] **Reasons for imposing a custodial sentence - s.35:** Having considered the outline of facts together with your Pre-Sentence Report, the Court has 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 for the reasons which now follow.

[33.] At the outset, the Court adverted to section 6 of the *Offences Against the Persons Act, Cap. 144* which stipulates that the permitted maximum custodial sentence which may be imposed on any person convicted of manslaughter is imprisonment for life. The Court was therefore satisfied that viewed broadly, the offence of manslaughter is clearly a very serious offence and one which, Parliament intends in appropriate cases to carry the maximum available custodial sentence of life imprisonment.

[34.] In keeping with the approach mandated by the *Penal System Reform Act*, the Court the Court determined the seriousness of the specific manslaughter offence in this case having regard to the following aggravating and mitigating factors in relation to the offence:

- i.) The Court is satisfied that the offence was neither planned nor premeditated and that on your encountering the sleeping man under a shed on Browne's Beach in the early morning hours of December 12th, 2008, you spontaneously formed the decision to rob him. The Court therefore found that the absence of planning or premeditation was a mitigating factor to be considered in evaluating offence seriousness;
- ii.) Having decided to rob the deceased, you then armed yourself with a piece of metal pipe which (according to you) you had found

nearby on the beach. You then approached him and proceeded to search his pockets. In this regard, the Court was satisfied that the offence was aggravated by the fact that at the time you approached the sleeping man with the intention of robbing him, you had armed yourself in advance with a potentially dangerous weapon;

iii.) When the deceased man awoke to find you over him in the act of going through his pockets, you told police that he had kicked you causing you to stumble backwards. As he attempted to get up, you then launched a completely unjustifiable attack on the deceased with the pipe you were carrying, lashing him no less than two times with the pipe. Although (according to you) you had taken up the piece of iron with the intention of using it to defend yourself if you had a confrontation, the Court was satisfied that no issue of self-defence arose on the facts and the offence was aggravated by the fact that you were the aggressor and the deceased was unarmed;

iv.) Although (according to your written statement) you only struck the deceased man twice with the "*piece of iron*", the post mortem report revealed that the deceased died from traumatic chest injuries with hemorrhage and shock. In the circumstances, the Court was

satisfied that the fatal chest injuries strongly indicated the considerable degree of force which you had used against the defenseless and unarmed man. The degree of force employed was also a factor which, in the Court's view, also aggravated the seriousness of the offence;

- v.) Finally, the Court also regarded as an aggravating factor of the offence, the fact that (according to you) after you had delivered the second blow and the deceased man had dropped helplessly to the ground on his back, you callously rifled through his pants pocket looking for items to steal. After you had robbed him of the \$10.00 you had found in his pocket, you then turned the injured man over *'pon his face* to continue your ruthless search for something more to steal. The facts disclose that two passersby who had been walking on the beach had heard the sounds of someone moaning. Upon investigating the sounds, they had seen you standing over the deceased. This strongly suggests that your injured victim had been obviously incapacitated and had been moaning as you ruthlessly robbed him and later left him for dead on the beach. Your callous disregard for human life is troubling in the extreme and in the Court's view, greatly aggravated the seriousness of the offence.

[35.] Ultimately, the Court was satisfied that this was a serious case of manslaughter, high up on the manslaughter scale, with numerous aggravating factors and with very few mitigating features.

[36.] During the course of his mitigation and legal submissions, Defence Counsel, Mr. Headley submitted, *inter alia*, that in his opinion, this case falls for sentence within guideline 4 of the manslaughter guidelines established by the Barbados Court of Appeal in **Pierre Lorde**.

[37.] He pointed to the fact that weapon, “*a piece of iron*” which you had used and which caused death in this case could not be said to be intrinsically dangerous. He suggested, based on **Pierre Lorde**, that this is a case where, having regard to your guilty plea, a sentence of less than 8 years would be appropriate.

[38.] For his part, Crown prosecutor, Mr. Applewhaite initially suggested that the case fell to be considered within guideline 3 of **Pierre Lorde**. He however subsequently submitted that a term of imprisonment of 25 years was adequate.

[39.] Having regard to your early guilty plea and keeping the manslaughter guidelines established in **Pierre Lorde** firmly in mind, the Court considered that that this was a case where the current Court of Appeal guidelines with their obvious bias towards deaths caused by firearms, are woefully inadequate to enable the Court to do justice.

[40.] The Court was also of the view that this is a case where the need for deterrence must be reflected in the sentence passed by the Court, and where a longer sentence than otherwise might be the case must be imposed for this violent and reprehensible crime. Persons like you, predators who prey on others and in the process end up killing the victim of their crime, ought not to be given a lighter sentence, simply because no firearm or no intrinsically dangerous weapon was used in the commission of the offence. Surely, the four *Pierre Lorde* guidelines were not intended to apply to a case like yours!!!

[41.] In the circumstances, doing the best that it can do within the existing *Pierre Lorde* guidelines which may be in need of revision, the Court in the exercise of its sentencing discretion, established 20 years as the appropriate starting point for determining the length of your sentence.

[42.] *Length of the Custodial Sentence – Section 36:* Having considered the gravity of the offence and established the appropriate starting point for determining the length of your sentence, the Court kept in mind 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.

[43.] The Court next turned to section 36 of the *Penal System Reform Act* and considered the issue of proportionality with a view of determining what length of sentence would be appropriate to do justice in this case.

[44.] Focusing next on you as the offender, the Court then took into account the factors which, in the view of the Court, have reduced the seriousness of the offence and reflect a level of personal mitigation of you as *the offender*. These were:

- a) firstly, your guilty plea. In this regard, the Court observed that this offence was committed in 2008 and you pleaded guilty in October 2014. However, the Court does not have before it a complete chronological history of your case from the date of your charge in early 2009 to your subsequent committal and indictment. There is also the absence also of information as to whether you were previously arraigned in the High Court before you finally pleaded guilty in October 2014. In these circumstances, the Court is unable to say that your guilty plea (coming as it did some 5 years following your charge) was a particularly timely one. Nevertheless, a discount of 3 years was allowed;
- b) an appropriate discount was also allowed to take account of the fact that you cooperated with the police investigations giving both oral and written statements admitting your involvement in the death of the deceased; and

c) Finally, I have taken into account the public apology you expressed to the Court and to the relatives of the deceased for your actions following the *Allocutus* earlier in these proceedings and again today.

[45.] During the course of his mitigation, Defence Counsel, Mr. Headley drew the Court's attention to the fact of your homelessness, your nomadic existence and the instability of your adolescent years as disclosed in your Pre-Sentence Report. He urged the court to take these matters into account as mitigating factors in determining your sentence.

[46.] After considering the matter, and in the absence of legal authorities being placed before me establishing that such matters can be taken into account in mitigation of sentence, I have declined to give you any reduction in sentence by reason of such matters.

[47.] While it is important for these matters to be placed before the Court during the sentencing process to give the sentencing judge a full appreciation of the sociological background and the possible motivations for the offence, a hard life and the fact of homelessness cannot, in the Court's view, excuse your actions which were callous and ruthless in the extreme.

[48.] **Time spent on Remand:** According to Prison Officer, Sgt. Bentley Boucher, as at December 12th, 2014 you had spent a total of 2,130 days on remand awaiting the final disposition of this matter.

[49.] To this period the Court had added the additional 38 days which have elapsed since December 12th, 2014 up until today's date.

[50.] In keeping with the CCJ decision of **Romeo Hall**, you will be given full credit for the now 2,168 days [i.e. 5 years 343 days] you have spent on remand to date awaiting your trial and the final disposition of this matter.

[51.] **Order of the Court:** *Bertram Omar Carter*, you are hereby sentenced to the term of imprisonment of **15 years** for this offence to commence with immediate effect.

[52.] From this sentence and in keeping with the CCJ decision in **Romeo Hall**, there will be deducted, the full period of 2,168 days [i.e. 5 years, 343 days] which you have to date spent on remand since February 12th. 2009, awaiting final resolution of the matter. In the result, you will be required to serve the remaining **9 years, 22 days** in custody for this offence.

[53.] Although, the outline of facts do not reveal that that drug or alcohol abuse played any part in the commission of this offence, your Pre-Sentence Report clearly suggests that you have developed a strong dependence on marijuana and alcohol. In the circumstances, during your incarceration and with the aim of your rehabilitation, you are to undergo such drug treatment programs and counseling as will be arranged for you by the Superintendent of the Prisons.

[54.] 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 on your eventual release from prison.

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

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

Maureen Crane-Scott
Judge of the High Court
2015-01-19