BARBADOS

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL

Criminal Appeal No. 10 of 2017

BETWEEN:

JERRICK SAMUEL TUDOR **Appellant**

AND

THE QUEEN **Respondent**

Before: The Hon. Kaye C. Goodridge, Justice of Appeal, The Hon. Margaret A. Reifer and The Hon. William J. Chandler, Justices of Appeal (Acting)

2019: October 8,

December 17

Ms. Rita Evans for the Appellant

Mr. Alliston Seale for the Respondent

DECISION

GOODRIDGE JA:

INTRODUCTION

[1] This appeal is against sentence. On 21 April 2016, the appellant appeared before the court charged with murdering Krystal Lovell (the deceased) on 1 December 2013. He pleaded not guilty to murder but guilty to manslaughter. His plea was accepted by Mr. Alliston Seale on behalf of the Crown.

[2] On 23 June 2017, the judge sentenced the appellant to spend 11 years and 165 days in prison. He was also ordered to receive alcohol and drug rehabilitation treatment.

THE FACTS

[3] The following facts were read into the record by Mr. Seale and were accepted by Ms. Verla De Peiza, defence counsel.

[4] The appellant and the deceased were involved in a romantic relationship for a number of years during which time a daughter was born. The parties had previously resided at a house in Highland, St. Thomas, which was located behind the home of the deceased's family.

[5] Difficulties arose in the relationship which led to the appellant leaving the home which he shared with the deceased. However, despite the breakdown in the relationship, the appellant continued to have access to their daughter.

[6] The appellant discovered that the deceased had entered into a relationship with another man. Nevertheless, he harboured the hope that his relationship with the deceased would be rekindled. He spoke to the deceased about the possibility of reconciling and this led to a meeting between the parties.

[7] Subsequently, the appellant asked the deceased to break off the relationship with the third party. She indicated her willingness to do so, but in her own time. Meanwhile, the appellant had taken the cellphone of the deceased and

having discovered the telephone number of the third party, took it upon himself to advise him of the situation.

[8] On the night of the incident, the appellant went unannounced to the home of the deceased in the hope of persuading her to restart the relationship. He heard the deceased speaking on the telephone. The appellant called the third party's number and quickly ended the call. Shortly thereafter he heard the deceased say "wait, what happen, he call your phone for truth?"

[9] The appellant continued to eavesdrop and heard the deceased say that she would get back with him in her own time and that she didn't care whether he was annoyed or not. The appellant got angry and burst into the deceased's home. He took a knife which he had in his bag and stabbed the deceased several times. The deceased ran into the yard and fell at the bottom of the stairs.

[10] The father of the deceased rushed out of his home but was unable to help his daughter. He then held on to the appellant and armed himself with a cutlass, but was prevented by his neighbours from attacking the appellant. With his brother's assistance, the father bound the appellant with rope and kept him until the police arrived.

[11] The appellant was taken into custody and interviewed by the police. During the course of the interview, the appellant made an oral statement in which he

admitted inflicting injuries on the deceased and agreed to provide a written statement. The relevant part of that statement is as follows:

> "I sat outside at the side of the house in the backyard and listen to Krystal talking, I assume to Kevin on the phone, telling him that I want she to tell he that it over but she ain't really sure because I ain't a bad fellow but she don't like my attitude. I continued to listen to the conversation, I started to get paranoid because Krystal telling me one thing and doing what she feel like, playing with my emotions. I felt numb and hurt.
>
> I had a knife in my possession and when she tell the person she don't care how I feel I went inside Krystal house and I say, "You don't care how I feel," and I stab she a few times. She shout for her father, he came barging in, at that Krystal had run outside. She father approached me and start to fight with me, he throw me to the ground. I tried to get 'way and he shout and call for he brother Tony Lovell. He kept saying, you kill my daughter, you kill my daughter. I tell he she ain't dead she just run outside, if anything, call the ambulance. After that they dragged me outside in the yard. While they were dragging me I see Krystal outside in the yard lying down on the ground. They hit me and they try to break my foot and took me in the front of the road and beat me and tie me up until the police came."

[12] The post mortem conducted on the deceased revealed that 7 stab wounds were inflicted. Death was attributed to haemorrhagic shock, secondary to stab wounds to the chest.

THE APPEAL

Submissions of Counsel

[13] Ms. Evans, counsel for the appellant, submitted that the sentence imposed by the judge was excessive. Ms. Evans stated that during the sentencing hearing, counsel for the appellant had submitted that the appropriate starting point was

between 10 to 14 years while counsel for the respondent had suggested 12 years.

[14] Counsel also submitted that in considering 20 years to be an appropriate starting point, the approach taken by the trial judge was wrong and consequently, that figure was too high. Ms. Evans contended that the judge failed to properly account and assess what she considered to be the aggravating and mitigating factors in the case. She submitted that a reasonable starting point would have been 15 years, having regard to the aggravating and mitigating factors in this case.

[15] Further, Ms. Evans argued that the discount applied by the judge for the early guilty plea was not correct in light of the **CCJ**'s decision in **Teerath Persaud v R [2018] CCJ (AJ) (Teerath Persaud)**. Counsel contended that if the judge had applied a discount of one-third the sentence could not have been 15 years.

[16] In response, Mr. Seale submitted that, having regard to the aggravating and mitigating factors relating to the offence, an appropriate starting point would have been 15 to 16 years. He continued that the judge would then have to determine what the notional sentence would be after giving consideration to the aggravating and mitigating factors relating to the appellant.

THE JUDGE'S SENTENCING REMARKS

[17] The record shows that, as required by **section 35(4)** of the **Penal System Reform Act**, **Cap. 139**, the judge formed the opinion that the offence committed by the appellant was so serious that only a custodial sentence was appropriate. She stated that as the Crown had accepted the plea of guilty of manslaughter on the basis of provocation, she had made certain assumptions in the appellant's favour by way of mitigating the seriousness of the offence. Those assumptions are listed at **p76 lines 7** to **19** of the record.

[18] The judge identified the aggravating and mitigating factors relating to the offence and then the mitigating factors relating to the appellant. She included the guilty plea as a mitigating factor. In the judge's opinion, the facts of the case did not fall squarely within either guideline 3 or 4 of the **Pierre Lorde Guidelines**.

[19] The judge next determined that the appropriate starting point was 20 years. She applied a discount of 5 years for the following mitigating factors: the early guilty plea, the provocation by the deceased, cooperation with the police, the appellant's remorse, the pre-sentence report and the mitigation by counsel. Having arrived at a notional sentence of 15 years, she credited the appellant with time spent on remand and sentenced him to 11 years 165 days in prison.

DISCUSSION

[20] We begin our discussion by reiterating that this Court will only intervene to quash a sentence where it has been established that the sentence imposed is manifestly excessive, grossly disproportionate, wrong in principle or that the judge did not comply with some statutory or procedural requirement.

[21] As we have said on many occasions, judges must pay/have due regard to guidelines laid down by this Court. However, guidelines are not to be regarded as a fetter on a judge's discretion, for it is accepted that guidelines do not capture every factual situation which may arise. Further, as this Court stated in **Pierre Lorde v R (2006) 7 WIR 28,** guidelines "are 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." Indeed, the **CCJ** stated in **Teerath Persaud** that "Sentencing guidelines provide assistance to the sentencing judge, not rules from which departure is prohibited. They may be departed from provided the judge gives cogent reasons for doing so."

[22] The **Pierre Lorde Guidelines** provide guidance on the range of sentences in two types of cases: (i) where there is a contested trial and (ii) where there is a guilty plea. In the second part of each guideline, the range indicated takes into account the guilty plea. Where a matter falls within one of the guidelines, it is

not intended that a further discount is given for the guilty plea, as this would result in a defendant receiving a double benefit for that plea.

[23] As stated earlier, the judge determined that the case did not fall into any of the guidelines in **Pierre Lorde** and arrived at a starting point of 20 years. In doing so, the judge took into consideration the aggravating factors relative to the offence which she identified as follows: (i) being armed with a weapon; (ii) use of a weapon; (iii) killing occurred in the deceased's home. The mitigating factors were listed as: (i) action was spontaneous; (ii) provocation.

[24] We are of the opinion that the starting point of 20 years selected by the judge was appropriate in the circumstances. This was a grave case of manslaughter. No aggravating factors were identified by the judge relative to the appellant, but the mitigating factors were: (i) his age; (ii) no previous convictions; (iii) cooperation with the police; (iv) evidence of remorse. We are of the view that when these mitigating factors are taken into account the sentence will be adjusted downwards by 2 years.

[25] The judge treated the early guilty plea as a mitigating factor and this led to her applying a small discount. As this Court stated at **para [25]** in **Arrundell Padmore v The Queen, Criminal Appeal No. 18 of 2005,** a guilty plea should be dealt with separately from other mitigating factors. It must be noted

that, at the time this matter engaged the attention of the trial judge, the decision in **Teerath Persaud** had not yet been given.

[26] In relation to guilty pleas, the **CCJ** stated at para [54] of **Teerath Persaud**:

> "There are sound policy reasons for a significant reduction of sentences especially in the case of an early guilty plea. Such a plea is in the public interest as it avoids the need for a trial and saves victims and witnesses from having to give evidence of often traumatic events, shortens the time between charge and sentence, and saves costs. Best sentencing practice suggests that the discount should be approximately one-third for a guilty plea entered at the earliest opportunity, with a "sliding scale" for later pleas to at least 10% depending on the stage of the trial where the plea is entered."

[27] The appellant pleaded guilty to the offence at the earliest opportunity. Therefore, following the guidance of the **CCJ**, a one third reduction should have been applied to the sentence of 18 years. This would have resulted in a notional sentence of 12 years.

CONCLUSION

[28] We have therefore concluded that the sentence of 15 years imposed by the judge was excessive. **Section 14** of the **Criminal Appeal Act, Cap. 113A** empowers this Court to alter a sentence if it thinks that a different one should have been passed. We consider this to be a case in which this Court should exercise its discretion to quash the sentence imposed by the judge and substitute a lesser sentence.

DISPOSAL

[29] The appeal is allowed. The sentence of 15 years is quashed. The record shows that the appellant spent 1,296 days or 3 years 200 days on remand. This period will be deducted from the notional sentence of 12 years leaving 8 years 165 days. This Court therefore substitutes a sentence of 8 years 165 days to run from 23 June 2017.

Justice of Appeal

Justice of Appeal (Acting)

Justice of Appeal (Acting)