

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CRIMINAL DIVISION

Indictment No. 168/2016

BETWEEN:

THE QUEEN

Prosecution

v

FIDEL NKOMO ALLEYNE

Accused

AND

MALISSA CARLA GRIFFITH

Before: The Honourable Carlisle Greaves, Judge of the High Court

Date of Hearing: 2020 June 12

Appearances:

Ms. Krystal Delaney, Principal Crown Counsel for the Crown

Mr. Andrew Pilgrim QC, Attorney-at-Law for the Accused (Alleyne)

Ms. Angela Mitchell-Gittens, Attorney-at-Law of the Accused (Griffith)

DECISION

Guilty plea to non capital murder - appropriate sentence - use of a firearm and non recovery of the firearm, substantial aggravating factors

CARLISLE GREAVES J:

INTRODUCTION

[1] The two accused, Fidel Alleyne and Malissa Griffith, were jointly charged on indictment, dated 5th October 2015, for the murder of Lamar Carter, between the 9th and 10th of February 2015.

[2] On the 15th January 2020 having been examined and found to be fit to plead pursuant to **section 6A** of the *Criminal Procedure Act, 2018*, both defendants pleaded guilty to murder. The prosecutor accepted those pleas and placed it on record pursuant to the amended **section 2** of *The Offences Against The Person Act, Cap. 141*, that this is not a case in which the prosecution would be seeking the death penalty. This is consequently the first case of its kind to be sentenced under the new amendments. The prosecutor then outlined the facts. The delay in sentencing since the pleas was contributed to by the necessity for a presentencing report and the advent of the Covid 19 close down.

[3] The parties have consented to sentence by way of the Zoom technology and counsel have all submitted their submissions in writing and stand by those submissions subject to slight variations.

THE FACTS

[4] According to the prosecutor, Ms Griffith, was in a domestic relationship with the deceased, Mr Carter, who from time to time delivered blows to her and on occasion caused her injury. She obtained medical assistance on at least one occasion and she made reports to the police. After several instances of this sort and several complaints to the police she formed the view that she was not receiving a sufficient assistance from the police.

- [5] A friendship developed between her and Mr Alleyne, to whom she made several complaints about her predicament. Eventually she sought his assistance to do something about the now deceased, Mr Carter.
- [6] Together they hatched a plan by which Mr. Carter was to be persuaded that a customer needed to see him about a transaction and then the enterprise which resulted in his death would be carried out by Mr. Alleyne whilst Ms. Griffith was away in Guyana.
- [7] Mr Alleyne then met Mr Carter and a struggle ensued between them and Mr Alleyne overcame Mr Carter by striking him with a stone. He then loaded him into his car trunk and drove away with him. A time came upon hearing a commotion in the trunk of the car he stopped it to investigate, whereupon Mr. Carter jumped from the trunk and attempted to run away. Mr Alleyne, armed with a gun, fired at Mr. Carter as he was running away and struck him to the back of the head, killing him. He then loaded him into the trunk of the car again and drove to his brothers house to obtained his help to dispose of the body.
- [8] Later in the area of St. Thomas he stopped the car to investigate a dragging sound and whilst there a police vehicle came upon them with the officers making inquiries as to whether they needed assistance. That was declined. Upon leaving, one of the officers observed some bloody substance emitting

from the car and a chase ensued. The defendant and his brother eventually escaped the car and fled, whereupon the police discovered the deceased in the trunk. Investigations ensued.

[9] Thereafter the two accused were in contact and in discussions with each other about the events whilst she was in Guyana. She was not happy that he had fled, leaving his cell phone in the car with their contact details and he was not happy that despite his love for her and what he had done for her she called him a disparaging name for leaving the phone behind.

[10] Soon Mr. Alleyne was apprehended at the airport whilst trying to flee the island.

[11] He immediately gave the police a confession. In that confession, he alleged inter alia that at first he was supposed only to beat up the deceased but when the events turned he shot him as he ran away. He also asserted that he lost the firearm in flight.

[12] The second defendant eventually returned to Barbados. Upon her apprehension, she also gave the police a confession of the part she played. In it she inter alia admitted that she told the defendant she wanted Mr. Carter dead. Both defendants have participated in presentencing reports.

THE SUBMISSIONS

[13] The prosecutor submitted that for Mr Alleyne, a starting point of 30 years is appropriate, considering the aggravating factors inclusive of his pre-planning of the enterprise, arranging the meeting armed with ties, his striking the deceased with a stone, securing him in the car boot and his subsequent use of the firearm to shoot him in the head as he attempted to escape. She submitted there should be a reduction of 10 years due to his mitigating factors, which includes no previous convictions, some remorse, a very good social report suggestive that he was of good character, with his own business, helpful to the community and the surprise to the community that he committed the crime, his early confession and cooperation with the police.

With those factors in conclusion she arrived at a sentence of 20 years.

With application of a 1/3rd reduction for his guilty plea arriving at a notional 13 years and the subtraction of his time in custody therefrom she submitted the result would be the appropriate sentence at this time. His time in custody has been calculated at 1408 days or 4.85 years rounded off at 5 years. Thus the appropriate sentence based on the prosecutions submission would be 8 years imprisonment.

[14] In respect of Ms Griffith, she submitted a starting point of 24 years considering the aggravating factors which include her request for Mr Carter

to be dead, her role as instigator, her creation of the plan to lure the deceased, her plan of convenience to be out of the island to provide herself with an alibi defence.

- [15] She submitted that her mitigating circumstances should reduce that starting point by 10 years. They include her previous good character, no previous convictions, and owning her own business.
- [16] This notional 14 years should be followed by a 1/3rd reduction (4.6 years) for her guilty plea followed by credit for time served in custody. That was calculated at 1653 days (4.5 years). Therefore her sentence would be now 5 years imprisonment.
- [17] Counsel for Mr Alleyne is not at variance with the prosecution in respect of the facts, aggravating and mitigating factors nor the imposition of a custodial sentence.
- [18] He submitted the final sentence after the usual discounts should be between 7 and 9 years.
- [19] Counsel for Ms Griffith is also not at variance with the prosecutor in respect of the facts, mitigating and aggravating factors nor the need for a custodial sentence. She submitted, after the required discounts, the sentence should be four years.

THE LAW

[20] *The Offences Against the Person Act, Cap. 141* was amended subsequent to this offence and came into effect on 19th November 2018. That amendment substantially changed the approach to the sentence that maybe imposed after conviction for murder in Barbados. In effect by **section 2(1) to 2(7)**, it abolished the mandatory death penalty and provided a regime for when such penalty or other penalties maybe imposed.

[21] **Section 2(1)** provides that upon a conviction for murder a person may be sentenced to death or to life imprisonment.

[22] **Section 2(2) (a) to (i)** sets out those instances in which the death penalty maybe imposed.

[23] In the interest of brevity, I will summarize them as follows:

a murder with

- (a) a high level of brutality, cruelty, depravity, or callousness,
- (b) involving calculated or lengthy planning, or where the deceased was,
- (c) a judge, magistrate, legal officer etc and that was a factor, or
- (d) a member of the police, prisons, or defence force and that was a factor, or
- (e) a member of a group with a common characteristic such as race, nationality, ethnicity or religion and that was a factor, or,
- (f) was a juror in a pending trial and that was a factor, or
- (g) vulnerable by reason of age, health or other disability, or
- (h) the convict committed two or more like offences...or

- (i) in the courts opinion there are other exceptional circumstances.

- [24] **Subsection (3)** deals with when a sentence of death maybe commuted.
- [25] **Subsections, (4), (5) (6) and (7)** deals with those instances in which the court may impose a sentence other than the death penalty.
- [26] **Section 2(4)** provides, *Where the Court sentences a person convicted of murder specifically to imprisonment for life, the court shall specify a minimum term of imprisonment to be served by the convicted person before becoming eligible for grant of a release order.*
- [27] **Section 2(5)** provides, *In determining the appropriate minimum term of imprisonment pursuant to subsection (4), the Court shall have regard to the guidelines set out in sections 39 and 41 of the Penal Reform Act, Cap. 139.*
- [28] **Section 2(6)** provides, *Where the Court, in sentencing a person convicted of murder does not impose the sentence of imprisonment for life, the Court shall impose a term of imprisonment having regard to the guidelines set out in sections 39 and 41 of the Penal Reform Act, Cap.139.*
- [29] **Section 2(7)** refers to the meaning of “release order” which is pursuant to **Section 2** of the *Prisons Act, Cap. 168.*
- [30] So in effect, **Section 2** of the *Offences Against the Person Act,* provides for three types of sentences when a person is convicted for murder. The court may sentence that person to death, or to life in prison with a fixed time for

release or simply to a fixed term. In the latter two instances the court must apply the guidelines set out in the *Penal Reform Act*.

THE SENTENCE

[31] In the instant case both the prosecution and counsel for the two defendants submit that this is an appropriate case for a fixed sentence. I have considered the severity of the offence, the circumstances leading to its commission, the manner in which it was committed, the aggravating and mitigating circumstances, the probation presentencing reports, the provisions of the *Penal Reform Act*, the likelihood of further offending, the time served and likely to be served, and the relevant decided cases. I see little or no reason to deviate from counsel's suggestion.

[32] In determining the sentence of Mr. Alleyne, I consider 30 years to be an appropriate starting point.

[33] The aggravating factors include his preplanning of the enterprise, his use of a firearm to commit the offence and the non-recovery of that firearm. The unlawful possession of a firearm alone would normally attract a substantial sentence in this jurisdiction. When it is used to commit an offence, particularly a serious offence such as murder one could expect a substantially large sentence. When that firearm is not recovered, it raises the spectre that it maybe used again either by the accused at some future date or by another or

others. That is in my opinion a substantial aggravating factor. In some jurisdictions the court is first required to determine the sentence for the substantive offence and then follow that with a consecutive sentence for the use of the firearm to commit the substantive offence. (See for example **section 26A of The Firearms Act 1973, Bermuda** and the cases of Wolda Gardner v The Queen No. 6 of 2015 and The Queen v Leveck Roberts Bda CA. No.3A of 2015).

- [34] The mitigating factors include, as stated in his confession, his apparent initial intent only to beat up the deceased and scare him to deter the deceased's further abuse of Ms Griffith, that being apparently bungled, resulting in his shooting of the deceased to prevent his fleeing.
- [35] In the circumstances, I would adjust his sentence and fix it at 20 years. I will then allow a discount of one third for his guilty plea and discount the days he has spent in custody.
- [36] In addition I will allow some discount for the period he spent on bail on the basis that a subject though on bail is not at full liberty. In the circumstances I will fix his sentence to be now served at 8 years effective from the date of his guilty plea.
- [37] In determining the sentence for Ms Griffith, I consider 24 years to be the appropriate starting point.

- [38] The aggravating factors, I find include, her role in the preplanning of the enterprise. She was indeed the instigator. In addition, according to her statement, she did tell the first defendant she wanted the deceased dead and she did arrange the enterprise so that as per her defence she would be out of the island at the time.
- [39] The mitigating factors, in addition to those identified by the prosecution, I would include, the long and frequent period of abuse physical and otherwise at the hands of the deceased, her frustration at the lack of assistance from the police, her eventual resolution of escape only by self help which unfortunately lead to the death of Mr Carter and that she did not actually pull the trigger.
- [40] I think no man can claim to wear the shoes of a repeatedly physically abused woman but whatever those maybe they must have in her world been excruciating if they lead her to the resolution that her only escape was by way of the death of her abuser. In such circumstances I think I should consider such abuse a substantial mitigating factor and allow substantial mitigation in sentence therefor.
- [41] In the circumstances, I will fix her sentence at 14 years less a one third discount for her guilty plea and a further reduction of the time served in custody. I shall also apply some discount for the period she spent on bail taking into account that despite a person's release on bail the subject is not

entirely at liberty. In effect she shall now serve 4 years imprisonment with effect from the date of the conviction.

[42] In the end, this is a sad case. From the beginning of time its is demonstrated that the heart of a man weakens his head but often too its the other way round. The deceased has lost his life, leaving his love ones to mourn their lost. The accused have for some period of time lost their liberty. But in all tragedies, there are always lessons for us all as a society. Our women are best loved, not beaten, we must take their cries seriously, regardless of who or what we are, but especially when we are persons in authority. By so doing we can save lives, theirs, ours and others.

Carlisle Greaves
Judge of the High Court