

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CRIMINAL DIVISION

Indictment No. 90/2012

BETWEEN:

THE QUEEN

Prosecution

v

JAMES RICARDO ALEXANDER FIELDS

Accused

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

Date of Hearing: 2020 July 3

Appearances:

Mr. Neville Watson, Attorney-at-Law for the Prosecution

Ms. Verla DePieza, Attorney-at-Law for the Accused

DECISION

Conviction for manslaughter - appropriate starting point - 22 years - use of a firearm and non recovery of the firearm, substantial aggravating factors - enforcement of drugs or gang business, substantial aggravating factors - provocation a mitigating factor.

CARLISLE GREAVES J:

INTRODUCTION

[1] On the 3rd September, 2012 the Accused was indicted for the murder of Michael Dear on 18th February 2010. Pursuant to **section 6A** of *The Criminal*

Procedure (Amendment) Act 2018, he was subsequently assessed and found to be fit for trial.

- [2] Trial commenced on the 18th February, 2020 and on 26th February, 2020 a jury by unanimous verdict found him not guilty of murder but guilty of manslaughter.
- [3] He was remanded in custody pending sentence but his sentencing was delayed by the requirement for a pre-sentencing report, which in this jurisdiction requires approximately 8 weeks, the world wide shut down since March by reason of the Covid19, the unavailability of certain character witnesses and other intervening factors.

THE FACTS

- [4] On the 18th February 2010 the defendant then 18 years old was engaged in the sale of drugs, cocaine rocks, under a hut in his Storey Gap, Codrington Hill, St Michael, neighbourhood.
- [5] He sold the deceased Mr Dear two rocks but Mr. Dear was dissatisfied with the sale and demanded the return of his money. A scuffle ensued between the two with Mr Dear barging the accused who was able to push him to the ground.
- [6] Mr Dear recovered and rushed at the accused with his fist whereupon the accused drew his firearm, shot Mr Dear dead and fled. He was not seen again

until the police arrested him several months later in the parish of St Thomas. Upon his arrest the accused gave the police an elegantly self written statement.

- [7] The entire incident was witnessed by a witness who testified against the accused.
- [8] The accused has called one character witness who was familiar with him since he was at a youthful age and who spoke well of him and expressed shock at his involvement in this incident. He also had the benefit of a pre-sentencing report, which this court has considered.

SUBMISSIONS

- [9] The prosecution submits, given the circumstances of this case, only a custodial sentence is appropriate. *Pierre Lorde v The Queen Cr App No.11 of 2003* was relied upon.
- [10] He submitted a starting point of 25 years, after taking into account the aggravating and mitigating circumstances relevant to the nature of the offence. *Pierre Lorde; Tereeth Persaud v The Queen, [2018]CCJ 10*. He cited *Pierre Lord* for the principle that “*where in a contested trial where death was caused by a firearm and the facts are on the border line of murder with no mitigating features, the range of sentence should be 25 years and upwards, including in a proper case, life imprisonment*”.

- [11] The aggravating factors he identified included, the use of a firearm to commit the offence, the concealment of the firearm thereafter, the sale of drugs at the time, the discharge of the firearm in public, the putting of another citizen at risk thereby, the accused's flight thereafter and long avoidance of apprehension. He submitted there are no mitigating factors and thus the aggravating factors outweigh any mitigating factors.
- [12] He further submitted other aggravating factors include, a previous conviction and his high risk of re-offending, whilst further mitigating factors include, his young age of 18 and immaturity at the time and his subsequent remorse for the death. Taking into account, the 2138 days or approximately 5 years 9 months spent in custody at 15th May 2020, Romeo Hall v The Queen [2011] CCJ 6, he submits the accused should now be sentenced to 19 years 3 months imprisonment.
- [13] Counsel for the accused submitted that the starting point should be at the lower end of the band established in Shawn Pinder v The Queen [2016]CCJ 13(AJ) which held that, "*in a contested trial where death was caused by a firearm and the facts are grave but mitigating factors such as provocation exist, the range in sentencing should be 16 to 20 years*".
- [14] She identified the aggravating factors as including, the use of the firearm, Bend and Murray v The Queen Crim App 19 and 20 of 2001, where use of a

firearm was particularly considered an aggravating factor but she cautioned it should not be double counted. Also submitted as an aggravating factor was the “*drug deal gone sour*”. See Maxo Tido [2011]UKPC16, Trimmingham v. The Queen [2009]UKPC25 and Ernest Lockhart v. The Queen [2011]UKPC33.

- [15] As for the mitigating factors she submitted, only one shot was fired, no evidence of premeditation, the young age of the accused at the time, the seniority of the deceased who charged at him and lost of his parents at an early age by way of the neglect of his father and the death of his mother.
- [16] In addition she cited his expressed remorse, that he was of no fixed place of abode but now owns his own home, has since the event embarked on some studies at the PomMarine, entrepreneurship through tattooing and sales, mentored children in school during the latter two years he has been on bail and now participates in a stable relationship.
- [17] She cited Andrew Lovell v R [2016]CCJ6(AJ) where a sentence of 22 years was confirmed after the appellant had as part of a group burgled a guest house and shot a visitor in the back; submitted to be a worse case than the instant; Teerath Persaud, a case she submitted to be of unusual cruelty, 14 years substituted by the CCJ; Bend and Murray described by the CA as an extremely appalling case, 14 years.

[18] She submitted, given a starting point of 16 years, the aggravating and mitigating factors, less the remand time she calculated at 7 years, a further sentence of 5 years imprisonment would not be unreasonable in the circumstances.

THE LAW

[19] **Section 6** of the *Offences Against the Person Act, Cap. 141*, provides that:

... a person convicted for manslaughter is liable to be sentenced to imprisonment for life.

[20] **Section 35** of *The Penal Reform Act, Cap. 139* provides that:

... where a person is convicted of an offence punishable with a custodial sentence...the court shall not past a custodial sentence on the offender unless it is of the opinion ...that the offence was so serious that only such a sentence can be justified for the offence or where the offence is a violent...offence, that only such a sentence would be adequate to protect the public from serious harm from the offender.

[21] For the reasons stated below, I find this to be a violent case so serious that only a custodial sentence is justified and that only such a sentence would be adequate to protect the public from the offender.

[22] **Sections 36, 37** and **41** set out the procedures which this court is bound to consider and apply and this court has done so.

SENTENCING

[23] The scourge of shootings resulting in death in this country has traumatized this nation for several years. Last year, 2019, we suffered a record number of

homicides, many by way of the firearm. There are probably dozens of firearm related cases presently awaiting disposition in these courts.

[24] This mayhem must rapidly come to an end and those who choose to arm themselves and shoot fellow citizens must by rapid, speedy trials and stiff sentences by these courts come to know their time has come. They must by our sentences receive a strong and clear message. Choose; No guns, freedom. Any guns, big prison.

[25] The instant case was another unnecessary unreasonable killing with a firearm. The victim was a drug addict in his elder years. In his stupor and dissatisfied with the product he received, he confronted the young drug dealing accused man, unarmed, to demand return of his currency. The accused had gained the upper hand, he had made the sale and had the money in hand. He had pushed to the ground, the elder man.

[26] He could have avoided him, evaded him, pushed him down again or chosen every other option than to shoot him but instead like some kind of Quick Draw Mc Graw , he drew and shot the man dead with an unlawful firearm.

[27] This was a violent crime for which the only sentence is one of substantial imprisonment.

[28] The penalty for this crime is life imprisonment. The penalty for the use of a firearm alone is 7 to 15 years with a range between 12 and 15 years.

Firearms Act Cap 179, section 3 and 30. R v. Bovell BB 23/2020.

[29] When the firearm is used to kill another, even in a case of manslaughter the sentence is severe. A substantial period of imprisonment is to be expected.

[30] In the instant case I find this was a manslaughter closer to murder, otherwise referred to in *Pierre Lord* as borderline murder. On the other hand it is arguable that there was some element of provocation per *Shawn Pinder*. For those reasons I consider 20 years imprisonment to be an appropriate starting point.

[31] I shall take into account two particular aggravating factors. The first being the drug dealing enterprise which lead to the death of the victim. I consider to be a substantial aggravating factor, the enforcement of drug dealing by way of a shooting to death of another. It cannot be denied that many shootings and killings in our society are driven by the drug dealing scourge. In my opinion, it is necessary to treat these cases with the most serious sentences when they are proved.

[32] In *Maxo Tido, Trimmingham, and Lockhart*, admittedly three death penalty murder cases with premeditation, which the instant case is not, the UK Privy

Council said in murder cases with premeditation for inter alia the enforcement of drug and gang policies, convicts should expect the most condign penalty.

[33] I consider that principle relevant, when read down, to attract very substantial sentences of imprisonment when homicides are committed for drug or gang enforcement policies, practices and dealings, whether non-death penalty murders or manslaughters and that it may also be applicable to cases of serious bodily harm, especially when with a firearm.

[34] The second aggravating factor I have particularly taken into account concerns the non-recovery of the firearm. As I said in *R v Fidel Alleyne and Malissa Griffith Ind. No. 168 of 2016* and *R v. Tevin Skeete Ind. No. 95 of 2015*, the non recovery of the firearm raises the spectre that it may remain available for the future use of the accused or by others and should be treated as a substantial aggravating factor. It is a factor that should not be written off as mere speculation. Often in these cases there is the defendants assertion that they somehow lost or misplaced the firearm. That assertion is, in my opinion too frequent and striking that it should not be treated with serious suspicion.

[35] Finally, I take into consideration that it was an unlawfully possessed and used firearm in this case.

[36] As I said in *R v Tevin Skeete, Ind. 95 of 2015*, the use of a firearm to commit a serious offence is considered so aggravating a factor that in some

jurisdictions, the court is first required to determine the sentence for the substantive offence and then add to that a consecutive mandatory sentence for the use of the firearm. The Firearms Act 1973, Section 26A, Bermuda. Applying that statutory provision, the court of appeal upheld a sentence of life imprisonment for murder with a tariff of 25 years before eligibility for consideration of parole to be followed by a further 10 years imprisonment attached to the tariff for the use of the firearm to commit the murder. In effect the defendant would be imprisoned for 35 years before eligibility for parole. Wolda Gardner v The Queen, No 6 of 2015, The Queen v LeVeck Roberts, No 3A of 2015 (CA). Bda.

- [37] The defendant received the benefit of a full trial, therefore there is no issue of a discount for a guilty plea.
- [38] In the circumstances, taking those aggravating factors I have identified into consideration, I consider an uplift to 25 years imprisonment appropriate.
- [39] In mitigation I take into account the accused's young age of 18 at the time. But as I noted in *Tevin Skeete* I must still recognize that it is not the old men who are shooting up our communities, it is the young men, many of whom are in the same age group as the accused.
- [40] I will also take into account his challenged life during his youth, inclusive of the early illness of his mother from the time of his birth until she died at his

age 14. I also take into account his assertion of an absent father but I note that it was that father with whom he was when he was apprehended by the police in St Thomas several months after he fled.

[41] I also note from the contents of his presentencing report that despite the trauma he alleged pertaining to his mother's illness and death and the absence of his father, he still possessed the fortitude and talent to successfully pass his common entrance exam and attend one of the two top schools in the island and to thereafter attain several high quality certifications.

[42] Yet so soon after school he engaged in the business of hard drug trafficking and the carrying of an enforcement lethal firearm.

[43] I therefore form the view, like the probation officer in effect, that despite all his talents, academics, charisma and intelligence, he chose to make choices, including the sale and use of hard drugs, the carrying of an unlawful firearm, the nomadic life style which as the probation officer suggest establishes a high likelihood of reoffending. Hence I am of the view the public needs to be protected from him.

[44] I have also taken into account the other mitigating factors highlighted by the report, the evidence of his character witness, the evidence of the probation officer under cross examination and the submissions by his counsel, inclusive of the progress he made whilst on bail for the last two years. I do not find

those factors of sufficient degree to by themselves merit a substantial reduction in sentence. However, I will add to those the submission that it is arguable he did suffer some provocation from the victim when he charged him though his retaliation exceeded the legal expectation.

[45] In the circumstances I will reduce the sentence to 22 years. To be subtracted from that is the 2138 days spent in custody up to 15th May 2018 which I shall round off at 6 years.

[46] The sentence is now 16 years to be served from 15th May 2020.

Carlisle Greaves
Judge of the High Court