

**BARBADOS**

**IN THE SUPREME COURT OF JUDICATURE**

**HIGH COURT**

**CRIMINAL DIVISION**

**Indictment No. 295/2019**

**BETWEEN:**

**THE QUEEN**

**Prosecution**

**AND**

**NECO RAMONE JOHNSON**

**Accused**

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

**Date of Hearing: 2020 August 10**

**Date of Judgment: 2020 October 30**

**Appearances:**

**Mr. Rudolph Burnett for the Prosecution**

**Ms. Safiya Moore for the Accused**

### **DECISION**

*Firearms Act, Cap. 179. Offence against The Person Act, Cap. 141; use of a firearm, wounding with intent; MSI; guilty plea; intentional harm firearm not recovered, a substantive aggravating factor; victim paralyzed sentence starting point 20 years.*

**CARLISLE GREAVES J:**

### **INTRODUCTION**

[1] After an MSI given on the 23<sup>rd</sup> of October 2020, the accused pleaded guilty on the 28<sup>th</sup> October 2020 on an indictment dated 25<sup>th</sup> March 2020 that he 1. On 19<sup>th</sup> September 2015 used a firearm without a licence and 2. On the same

date unlawfully wound Cal Best with intent to do him serious bodily harm, maim or disfigure him.

## **THE FACTS**

- [2] The accused armed himself with a firearm and shot the complainant in the back three times. The bullets pierced the heart, liver and lungs. The complainant was rushed to surgery at the QEH, spent approximately 7 months there and ended up paralyzed from the waist down. He is confined to a wheel chair. The firearm was never recovered.
- [3] When the accused was interviewed by the police on 25<sup>th</sup> September 2015, he sought to distance himself from the events and gave several alibis which were proved to be untrue. Eventually, by way of a number of oral statements he admitted to shooting the complainant.
- [4] In one of those orals he said, *“I ghine tell you, I aint hiding nothing. I went to kill he cause he feel he bad, thieving people herb”*.
- [5] He then gave a written statement in which he said he went with the intent to kill the complainant and as he pointed the gun to his head where he wanted to shoot him, he got up at the same time and was shot in the back.
- [6] When an identification exercise was conducted in relation to shoes found at the residence of the accused, in the presence of a witness who identified the

shoes, the accused said, “*dem aint the shoes I had on. Look you tek up my gun when it drop, yuh freak. Tell Cal Best, he is a dead man yuh cunt*”.

## **SUBMISSIONS**

- [7] The prosecutor submits, given the aggravating factors relating to the offence, the starting point should be 20 years and be upticked to 24 years.
- [8] The defence suggest an overall sentence of 15 years imprisonment.

## **REASONINGS**

- [9] The penalty for wounding with intent is life imprisonment per **section 16** of the *Offences Against The Person Act, Cap. 141* and up to 15 years for unlawful use of a firearm per **section 29** of the *Firearms Act, Cap. 179*.
- [10] After consideration of the facts in this case and upon consideration of **section 35** of the *Penal System Reform Act, Cap. 139*. I am of the view that only a custodial sentence is appropriate in this case.
- [11] The culpability is high in this case. This was indeed a classic attempted murder. The sentence must therefore fall at the higher end of sentences for wounding with intent. The accused’s own words are plain about that. He intended to shoot the victim in his head but because the victim rose he was instead shot in the back.
- [12] Furthermore the crime was premeditated and it was over enforcement of drug *matters*.

- [13] In *Queen v Trimingham [2009] UKPC 25*; *The Queen v Maxo Tido [2016] UKPC 16*; and *The Queen v Ernest Lockhart [2011] UKPC 33*, the UKPC strongly laid down that in such murder cases the most condign sentences should be expected. Admittedly the PC was at the time considering death penalty cases but I think the principle is apt in cases such as this for the same reason that an accused who commits what is in effect an attempted murder with a firearm with premeditation over the enforcement of a drug enterprise should expect to receive the most severe sentence under the applicable law.
- [14] In addition the harm in this case was high. The victim endured more than half a year of hospitalization. He is now paralyzed from the waist down and is confined to a wheel chair for mobility. His family has suffered substantially because of the injury according to the victim impact statements. Again these aggravating factors should attract a sentence at a very high level.
- [15] I have considered the accused's presentencing report. It is unflattering to say the least. He seem to have travelled the road of trouble from his early youth. Though his mother described his relationship with her as close and she did not seem to have any problems with him and those he associated with, even stating that he met all his developmental milestones. His father described him as a hot head and aggressive if provoked, though they too share a close relationship.

- [16] The accused seem to have exhibited some troubling behavioural issues from early childhood and spent three years in first form at secondary school until he was expelled early for misbehaviour. The father blamed the mother for her parenting style as upholding, even when he intervened.
- [17] Other residents and neighbours gave him mixed reviews, some as quiet and trustworthy, some as having a good support family, some as surprised by his crime, some described some of his associates as enterprising and some as negative influences and some described him as a follower with sometimes angry disposition.
- [18] He described himself as a daily user of marijuana having started since age 12. His employment record has been sporadic but he has an offer at mechanics when released from prison.
- [19] I find it particularly concerning that he would have intentionally shot the victim in this manner particularly since they appear to be well known to each other as according to the victim, they grew up together, despite their age difference, with the accused's mother having partially raised him.
- [20] Having taken into account the aggravating factors relating to the offence I consider a starting point to be 20 years for the wounding with intent.
- [21] The only mitigating factors I can identify of any significance is his guilty plea for which he shall receive a full 1/3<sup>rd</sup> discount.

[22] In addition I shall take into account his expression of remorse both in his presentencing report and to the court. I firmly believe he is genuine in that respect.

[23] In respect of the personal aggravating factors, I have taken into account the non-recovery of the firearm. As I have said in several decided cases, the non-recovery of a firearm used in the commission of a crime is a substantial aggravating factor as it raises the spectre that it may remain available either for future use by the accused or others. In addition, the accused is assessed as at high risk of re-offending.

## **DISPOSAL**

[24] In all the circumstances, I consider a sentence of 25 years is appropriate, less 1/3<sup>rd</sup> for his guilty plea, less 1778 days or 5.8 years in custody at 10<sup>th</sup> August 2020, sentence to be served rounded off at 10.8 from 10<sup>th</sup> August 2020 for the wounding with intent.

[25] As for the use of the firearm offence, I consider a sentence of 15 years to be appropriate, less 1/3<sup>rd</sup> discount and the 1778 days (5.8 years) time spent in custody. His sentence will be rounded off at 4 years from 10<sup>th</sup> August 2020 concurrent with the 10.8 years. To be served for the wounding with intent.

**Carlisle Greaves**  
**Judge of the High Court**