

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CRIMINAL DIVISION

Indictment No. 124/2016

BETWEEN:

THE QUEEN

Prosecution

v

SHAWN ANDRE WEEKES

Accused

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

Date of Judgement: 2021 May 28

Appearances:

Mr. Neville Watson for the Prosecution

Mr. Andrew Pilgrim, Q.C. for the Accused

DECISION

Offences Against the Person Act, Cap. 141 - Murder, sentencing after trial and conviction, 20 years delay, use of firearm an aggravating factor, life imprisonment, tariff, 35 years starting point, reduction for prosecution's delay, 19 years to serve.

CARLISLE GREAVES J:

INTRODUCTION

[1] The accused man, Shawn Andre Weekes appeared before this court for his first arraignment on 13th August 2020, on indictment No. 124 of 2016 dated

21st July 2016, which charged that he on the 29th of October, 2000, in the parish of St Phillip in this island murdered Leo Callender.

- [2] He pleaded not guilty and was given a warned trial date for 5th October 2020 and a fixed trial date for the 22nd February 2021.
- [3] The matter was adjourned for mention on 31st August 2020, and on that date, Dr. Blackman entered appearance on his behalf and indicated she was ready for trial. The warned trial date was adjusted to the 8th October 2020 and on that date trial commenced.
- [4] On 16th October 2020 the jury returned a unanimous verdict of guilty.
- [5] The accused was then remanded in custody pending sentence on the 4th December 2020, a presentencing report was ordered and submissions on sentencing were to be made by respective counsel by the 25th of November and 2nd December respectively.
- [6] Unfortunately those dates were not met and in the following year the Covid 19 pandemic caused the judicial and prison system to be closed down for a prolonged period. Consequently sentencing was delayed.
- [7] Several mentions followed for the purpose of monitoring the process beginning with the 1st February 2021 when Mr. A Pilgrim QC entered appearance with Dr. Blackman.

[8] On 11th May 2021, several character witnesses were called and testified on behalf of the accused.

[9] Written sentencing submissions were subsequently filed by the prosecution, followed by oral submissions today by Mr. Pilgrim for the defence.

THE EVIDENCE

[10] The evidence was that on Sunday 29th October 2000, a group of persons, including the now deceased victim Mr. Callender, were lining by a shop in Crane, St. Phillip when the accused together with a group of young men arrived and attacked the victim.

[11] The accused man had a gun in hand and shot the victim in the thigh and as the victim tried to crawl away toward the entrance of the shop, the accused man followed him and shot him again in the buttocks.

[12] Several of the persons present with the victim ran away as a result of the shootings and several were witnesses in the trial.

[13] Police arrived and processed the scene.

[14] A post mortem was conducted at the QEH mortuary on the body of Mr. Callender by consultant pathologist Dr. Stephen Jones on 31st October 2000.

He made the following findings:

- a. *A gunshot entry wound to the lower lateral aspect of the right thigh with an exit wound to the posterior aspect.*
- b. *A gunshot entry wound to the right side of the upper buttock 10 cm posterior to the anterior iliac spine and 6*

cm below the iliac crest. The path of the gunshot extended through the muscle of the upper buttock and the right wing of the iliac bone, entered the peritoneal cavity and in the path injured the right ilian (big) vein and artery. Then the path further extended through loops of bowel, exited the peritoneal cavity by the left pelvic sidewall and terminated to the left groin. He recovered a bullet from the body and that was handed over to the police.

c. He also found a collapsed spleen with a wrinkled capsule, meaning there was a significant loss of blood.

- [15] He opined that death was caused by gunshot injury to the abdomen with haemorrhage and shock. He explained the latter as resulting from the failure of organs due to the loss of blood.
- [16] The evidence revealed that shortly after the shooting the accused left the island, travelled to St Lucia, then to Canada and then to the United States of America. He remained overseas for 11 years until he was extradited or deported to Barbados in 2011 where he was arrested on arrival at the Grantley Adams International Airport by local police, charged and remanded in custody.
- [17] He was committed for trial in 2015, indicted in 2016, bailed in 2017, made his first High Court appearance in August 2020, tried in October 2020 and is now sentenced in May 2021. In all a substantial delay of over 20 years since the date of the offence, half of which was contributed by him by way of his flight and the other half before trial unexplained to this court by the system.

SUBMISSIONS

- [18] **The prosecution submits** that the now convicted man should be sentenced to a determinate period of 45 years imprisonment.
- [19] He submitted that the case meets the threshold for a custodial sentence after consideration of **section 35** of the Penal Reform Act, Cap. 139.
- [20] He identified the aggravating factors as including, significant physical suffering of the victim, the use of a dangerous firearm, a pre-arming with it by the assailant, a high degree of brutality, cruelty , depravity and callousness by the assailant, its commission in a public place, putting others at risk, premeditation, serious impact on the victims family as illustrated by the victim impact statement of his mother and the prevalence of these offences in the society.
- [21] For support the prosecution relied upon *Elliston Mc Donald Greaves v The Queen, Crim App. No.11 of 2008*, which stipulated that for manslaughter cases where the circumstances are heinous, or of exceptional brutality, or depravity, the starting point should be in the range of 25-35 years or in a proper case a life sentence with a minimum of 25 to 35 years before eligibility for release.
- [22] He thus submitted that since this is a murder case the range should be higher.
- [23] As to the personal aggravating factors of the offender, the prosecution found none discernable.

- [24] His mitigating factors were said to be his young age of 17 at the time, lack of maturity and his low risk of reoffending as assessed in his presentencing report.
- [25] **The defence submits**, this court should consider three factors, namely the significant delay in this case, the age of the accused at the time of the offence when he was 17 and the age he has now reached at 37 and apparently reformed. He further submitted that the court should consider whether the offence was so serious that it should now outweigh those events and lead to a sentence as significant as that suggested by the prosecution.
- [26] He referred to the case of *Elliston Mc Donald Greaves v The Queen, Crim App. No.11 of 2008* relied upon by the prosecution and submits that that case and the line of local manslaughter cases sought to lend guidelines to manslaughter cases in an era before the recent amendments to the *Offences Against the Persons Act* when it was not possible to enter pleas of guilty to murder and pleas of guilty to manslaughter were accepted by the courts in cases that were practically murder.
- [27] Accepting that there are no sentencing guidelines or statutes for the sentencing of youthful offenders for the offence of murder in this jurisdiction, he cited some other jurisdictions that have, including Canada and he relied upon the Canadian case of *The Queen v Jorrell Simpson-Rowe (a young person*

pursuant to the Youth Criminal Justice Act, S.C. 2002, c 1. which at page 2 paragraph 4 set out the principles for the sentencing of youthful offenders. Which for young persons appears to be at maximum a period of life in prison with parole at 7 years. For younger persons it appears to be less with parole at 4 years.

- [28] Referring to the local case of *Peter Barton v The Queen, Crim App. No. 7 of 2009* at page 25 para 39 he submitted that the accused should be credited with some discount for delay for which he is not at fault.
- [29] He submitted that in addition the accused has been in custody for 2158 days which he said is effectively 8 ½ years served and that this should be deducted from his sentence.
- [30] Furthermore the accused has been a good citizen post his release on bail, operating in a charitable manner as evidenced by his character witnesses and by his presentencing record and he should therefore be credited for that by reduction of sentence.
- [31] He submits that in all the circumstances the starting point should be 20 years imprisonment.

THE LAW

- [32] Prior to the recent amendment to the *Offences Against the Person Act, Cap. 141* the penalty for murder was death.

- [33] With the new amendments which came into force on the 19th November 2018 there are now three sentencing options. A person may be sentenced to death in certain circumstances as laid out by the Act or life imprisonment with a specific time of eligibility to be released or to a fixed determinate time.
- [34] *The Queen v Fidel Alleyne and Melissa Griffith Indictment No. 168 of 2016* was the first case to be sentenced under the new provisions. That was a case in which the two defendants pleaded guilty to murder.
- [35] In that case this court summarized the sentencing regime set out in the new amendments.
- [36] Because of the relatively recent amendments there is little or no guidance to be found in this jurisdiction on the issue of sentencing in non death penalty cases in this jurisdiction.
- [37] For some guidance, it may therefore be necessary for the moment to look at some other jurisdictions in the region experienced with such regimes.
- [38] Bermuda, for example, has a long history of non death penalty sentencing.
- [39] A perusal of their decided cases reveal that in murder cases where there is premeditation, the use of a firearm and gang related, their sentences tend to be life in prison with eligibility for parole after 35 years imprisonment.
- [40] This practice seem to have arisen from a combination of two previous sections of their Criminal Code Act 1907, which provided for life in prison with

eligibility for parole at 25 years, in the case of premeditated murder, or parole after 15 years in the case of simple murder (now amended and the limitations removed) and **section 26A** of their Firearms Act 1943 which provided that an additional period of 10 years (now 12 years when a first offence) should be added consecutive to the sentence for the substantive offence when a firearm is used to commit an indictable offence. A provision this court would advocate should be included in our local Firearms Act.

[41] The Queen v Leveck Roberts, Crim App. No. 3A of 2015. Is a recent decision of the Bermuda Court of Appeal. In that case the trial judge had sentenced the convicted man to life in prison with eligibility for consideration of parole at 25 years and 10 years of imprisonment concurrently for use of the firearm to commit the offence.

[42] On appeal by the Crown, out of time against the concurrent sentence, the appeal was allowed and the tariff was increased to 35 years.

[43] In Maxo Tido v The Queen [2011] UK PC16 it was held that in certain types premeditated murders convicted persons should expect the most condign sentences. One of those types of cases included gang related cases.

[44] It seems therefore, that the guidelines for manslaughter in the Ellison Greaves case (which was decided by the local Court of Appeal prior to the recent amendments to the Offences Against the Person Act, Cap. 141 for cases which

in all practicality were murder cases) are consistent with similar murder sentencings in Bermuda.

[45] In the circumstances, I find the numerous Bermuda cases useful on the issue of sentencing in the present case.

REASONINGS

[46] This was an arrogant, cruel, cold-blooded murder, committed with an unlawfully held firearm in the presence of several members of the community in public view. His defence was a not me defence. He nor the evidence offered any basis upon which the murder could be predicated. Any expression of remorse came only at the late stage of his allocutus.

[47] In my opinion therefore, this murder attracts a sentence of no less than life sentence imprisonment.

[48] Furthermore, the aggravating circumstances include, the use of a firearm, a very prevalent and worsening scourge in this jurisdiction for several years now, the murder was committed by the assailant in the company and assistance with a gang of young men which he apparently lead in a spiteful enterprise after earlier seeing the victim enter the vicinity. Thus, there is evidence of premeditation and determination to shoot and possibly kill the victim since after the first shot to the leg, the assailant followed and shot him again even as the victim crawled helplessly on the ground in pain.

- [49] He committed this offence in the presence of several adult members of the public thus causing them stress and the lowering of their confidence in a safe and lawful society.
- [50] Their sap of confidence was evidenced not only by their flight from the scene but by their apparent reluctance to give statements and or evidence.
- [51] On the other hand, I consider as mitigating factors, his young age of 17 at the time and lack of maturity. I do so with some caution because as I have pointed out in previous cases, I think courts must be careful about the degree of weight they place on the youthful age of accused men in firearms cases because it is not the old men who are arming themselves with firearms and are shooting up our communities, it is the youth and it is them whom we must be deter.
- [52] I have also taken into account his reported low risk of reoffending as submitted in his presentencing report and by his character witnesses.
- [53] In the circumstances I think a proper tariff at which he may be subject to a release order is 35 years.
- [54] One other factor is of serious concern to me. The delay in this case was substantial.
- [55] Firstly caused by the convicted man himself, who fled the jurisdiction immediately after the murder , travelled by the circuitous route of St Lucia and Canada to the United States where he avoided justice for 11 years,

contributed to the pain of the mother and other relatives of the victim as referred to in her victim impact statement and lowered the confidence of the community as they all must have felt justice was absent as he escaped with murder.

[56] I consider these actions on his part to be personal aggravating factors. Hence I vary from the prosecution on that issue when he did not identify any discernable personal aggravating factors. This is another reason I cannot fall below the 35 year tariff.

[57] On the other hand, the unexplicable delay of a further 9 years before his first appearance at the High Court for trial appears to be wholly intolerable and inexcusable.

[58] Even after he was indicted in 2016, he was not brought to court for arraignment.

[59] Even when he applied for bail in 2017 he was not brought to court for arraignment and remained at large in our community for another three years.

[60] All this, for a man who allegedly committed a serious murder in his community in the presence of adult people to whom he was known, did so with an unlawful firearm, in an age of serious firearm incidents, fled the island immediately after, stayed away for 11 years and never came back until he was deported.

- [61] If there was no urgency to bring this case to trial, one is left to ask or think well what case would they be interested in. No wonder we are so back logged and no wonder our deviant offenders, particularly our firearm defendants seem to think they can do as they please with immunity.
- [62] That this now convicted man was able to have two trial dates fixed upon his first appearance in August 2020, the first for just two months later and the second for just 6 months after under the 2020 reforms of the Supreme Court in practice Direction No. 4 of 2020, demonstrates where we ought to have been and could have been with proper management.
- [63] I think in these circumstances, just as I have not reduced his tariff from the 35 years because of his contribution to the 11 year delay, I am now compelled to reduce it for the unconscionable further delay by the Crown.
- [64] For that latter reason I will reduce the tariff by 7 years, a period of not more than two years I would consider to have been reasonable to bring him to trial after his return to the jurisdiction.
- [65] I have also considered the allocutus of the accused and I commend his effort to effect a change in his life. I consider that the offence as I have described above was too grave for any further reduction at this time.

SENTENCE

- [66] In the circumstances, I will sentence the convicted man as follows:

“Your sentence is life in prison. You must serve 28 years less the time already served in custody which I shall round off at 9 years. That means you must serve a further 19 years before you are eligible for a release order from the Superintendent of Prisons.”

Carlisle Greaves
Judge of the High Court