[2017] JMCA Crim 15A

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS 19 & 20/2013

BEFORE: THE HON MR JUSTICE MORRISON P
THE HON MRS JUSTICE SINCLAIR-HAYNES JA
THE HON MISS JUSTICE EDWARDS JA (AG)

DARYEON BLAKE AND VAUGHN BLAKE v R

Written submissions filed by Knight Junor Samuels for the applicants

Written submissions filed on behalf of the Crown

20 December 2017

MORRISON P

[1] By order made on 28 April 2017, we quashed the first applicant's conviction for murder and set aside the sentence of life imprisonment which had been imposed on him at trial. In lieu of the conviction for murder, we substituted a conviction for manslaughter and ordered that a social enquiry report be obtained as an aid to sentencing. We also ordered that, when the social enquiry report became available, it should be provided to counsel for the first applicant and the prosecution, who should be invited to make written submissions on sentence.

[2] The social enquiry report was completed and made available on 15 June 2017, and written submissions were in due course filed by counsel for the prosecution and counsel for the first applicant on 10 and 11 July 2017 respectively. With profuse apologies for the delay, this is the court's decision on the question of sentencing.

[3] As we have already indicated, the first applicant was originally charged with murder. The offence arose out of the death by stabbing of the deceased in a bar. Upon his conviction for murder, the learned trial judge sentenced him to life imprisonment, with the stipulation that he should serve a minimum of 20 years before becoming eligible for parole. At the hearing of the first applicant's application for leave to appeal, this court considered that the sentence imposed by the judge could not be said to have been manifestly excessive. However, given the substitution of a verdict of guilty of manslaughter, it is obviously necessary to revisit the level of sentence to be imposed on the first applicant.

[4] The social enquiry report on the first applicant, who was born on 30 April 1984 (thus making him 26 years of age at the date of the offence), was generally favourable. He had no previous convictions and was gainfully engaged in farming and construction at the time of the offence. When interviewed by the probation officer, the first applicant continued to maintain that he stabbed the deceased in self defence, but he expressed sorrow for the family of the deceased and for having become involved with the law. The probation officer's impression of him was that "one moment of a lack of common sense on his part has placed him in a position of gloom".

[5] In the first applicant's submissions on sentencing, the killing in this case was described as "a fatal stabbing in hot temper". We were referred to the three previous sentencing decisions of this court. First, in **Delroy Barron v R** [2016] JMCA Crim 32, in which the court substituted a conviction for manslaughter for one for murder, a sentence of 20 years' imprisonment was reduced to one of 17 years' imprisonment. In that case, the court considered that the offence was a serious, senseless killing, by a person whom even his own family members and the wider community described as "violent, aggressive and ill-tempered". Second, in **Emilio Beckford & Kadett Brown v R** [2010] JMCA Crim 26, upon the substitution of a conviction for manslaughter for one for murder, the sentence of 23 years' imprisonment imposed at trial was reduced to 18 years. The killing in that case involved the use of a firearm, occurred during a robbery and was considered by the court (at paragraph [37]) to be "heinous". And thirdly, in **R v Icilda Brown** (1990) 27 JLR 321, on a conviction for manslaughter by stabbing during a domestic incident, this court reduced the sentence of 10 years' imprisonment to seven years.

[6] Against the background of these cases, counsel for the first applicant pointed to the absence of any aggravating factors in this case, such as previous convictions, premeditation, use of a firearm, as against the presence of significant mitigating factors, such as the age of the first applicant, his previous good character, his gainful occupation and his capacity for reform. Taking into account the time spent in custody pending trial, it was submitted that a sentence of five years' imprisonment would constitute appropriate punishment in all the circumstances.

[7] In submissions on behalf of the prosecution, counsel also referred us to **Barron** and **Beckford & Brown**. In addition, we were referred to the more recent decision of **Rowe Gentles et al v R** [2017] JMCA Crim 2, para. [21], in which this court reiterated that, as had been previously been held in **Beckford & Brown** –

> "(i) sentences for manslaughter should generally reflect the difference in intrinsic seriousness between that offence and the offence of murder; and (ii) a sentence of 18 years' imprisonment after trial will generally be appropriate in a case of manslaughter at or close to the top of the range in terms of seriousness."

[8] In **Rowe Gentles et al v R**, sentences of 25 and 20 years' imprisonment imposed for manslaughter after a trial were reduced to 20 and 17 years respectively. Taking all relevant factors into account (including draft sentencing guidelines indicating a normal range of three to 15 years' imprisonment for manslaughter), counsel for the prosecution submitted that a sentence of 12 years' imprisonment would be appropriate in this case.

[9] In our view, the sentence of five years' imprisonment contended for by the first applicant's counsel would not represent fair punishment in this case. Unlike in **R v Icilda Brown**, the incident which resulted in the stabbing of the deceased in this case could in no wise be characterised as a domestic dispute, involving as it did a public attack on an unarmed victim in a crowded bar. On the other hand, however, we readily accept that the circumstances of the offence committed by the first applicant place it in a significantly less serious category than those described in any of the cases referred to

above. In the light of the absence of any seriously aggravating factors, the substantial mitigating factors which operate in the first applicant's favour (including two years and five months spent in custody pending trial), we consider that sentence of 10 years' imprisonment would be appropriate in this case. This sentence is to be reckoned as having commenced on 8 March 2013.