JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 12/2011

BEFORE: **THE HON MR JUSTICE PANTON P**
THE HON MR JUSTICE MORRISON JA
THE HON MR JUSTICE BROOKS JA

FRANKLYN CHONG v R

Mrs Melrose Reid for the appellant

Miss Maxine Jackson and Miss Patrice Hickson for the Crown

18 December 2013

ORAL JUDGMENT

MORRISON JA

[1] This appeal comes before the court pursuant to leave to appeal against the sentence given by the learned single judge of the court on 28 March 2013. On 14 February 2011, the appellant pleaded guilty to the offence of manslaughter on an indictment which charged him with murdering Nekeisha Hewitt. The learned trial judge sentenced him to 20 years' imprisonment at hard labour. In doing so, the learned trial judge indicated that in his view, had there not been a guilty plea, the sentence ought to

have been 25 years. But having taken into account the plea of guilty, he had reduced the sentence to 20 years' imprisonment.

[2] On appeal, Mrs Melrose Reid submits that the sentence of 20 years' imprisonment was manifestly excessive. The circumstances of this case as outlined by counsel for the Crown after the plea of guilty had been taken, were that the appellant used a knife to stab the deceased, who was someone with whom he had an intimate relationship, some 17 times at various places all over her body. It appears that the deceased was employed in a bar in the same community in which she resided with the appellant and that, on her way home with the appellant, after closing the bar, an altercation developed between them during which the appellant used the knife to inflict the stab wounds.

[3] A caution statement given by the appellant indicated that he was motivated by jealousy, in that he said he had earlier observed the deceased in the bar sitting in the lap of someone, and that he had observed activity resembling hugs and kisses going on between them. In the circumstances, he had retreated to his home, where it appears that he intoxicated himself with alcohol and marijuana, before coming back to meet the deceased on her way home from the bar.

[4] Mrs Reid submits that 20 years is manifestly excessive, that this was a pure crime of passion and that, indeed, on the facts, a defence of diminished responsibility might have been available to the appellant. She accordingly submitted a sentence of seven to 10 years' imprisonment might be more appropriate.

[5] This court has had to deal with guilty pleas on charges of manslaughter in lamentably similar circumstances on a number of occasions in the recent past. So there is no want of precedents in which the court has had to consider the question of crimes of passion or alleged crimes of passion in these kinds of cases.

[6] At the lower end of the scale there is the case of **R v Icilda Brown** (1990) 27 JLR 321 in which the deceased and the appellant lived together as man and wife. During an altercation between them at home, the appellant inflicted a stab wound causing the death of the deceased. Her defence was one of accident, and upon her conviction she was given 10 years' imprisonment at hard labour. This court reduced the sentence to seven years' imprisonment, pointing out that this was a domestic incident and that in the court's experience the range of sentences in such instances varied from five to seven years' imprisonment.

[7] However, it is clear from subsequent decisions in this court, notably **Daniel Robinson v R** [2010] JMCA Crim 75, that sentences of the order of seven to 10 years' imprisonment for manslaughter, even on a guilty plea, are somewhat out of range with what has been the common practice, both in this court and in the Supreme Court. In **Daniel Robinson**, which was a case of a guilty plea to manslaughter, this court reduced a sentence of 20 years to a sentence of 15 years' imprisonment, on the ground that it was manifestly excessive. This was primarily on the basis that the learned trial judge had given too much weight to the object of deterrence and not enough weight to the appellant's own personal circumstances. Similarly in **Durrant Morris v R** [2012] JMCA Crim 42 in which the applicant was sentenced to 15 years' imprisonment in what

appears to have been a domestic incident, this court upheld the sentence in the case of a completely unprovoked killing of the deceased.

[8] Against this background, it does seem to us that the sentence of 20 years' imprisonment may have been somewhat out of range, bearing in mind that the appellant in this case had no previous convictions. It was said in the Social Enquiry Report that he was a hardworking and loved citizen of his community, and an active member of the Christiana Police Youth Club. So taking all matters into account, we think that the sentence of 20 years' imprisonment falls to be reduced, on the basis of the previous decisions of this court. While a bench mark of some 15 years appears to have been established in cases similar to this, we consider that this case is distinguishable from those cases, primarily on the basis of the number of stab wounds the appellant inflicted on the deceased. In these circumstances, although it can be said that the killing of the deceased emerged out of a primarily domestic incident, the behavior of the appellant, it seems to us, is not entirely consistent with pure unprovoked action.

[9] We therefore allow the appeal against sentence by reducing the sentence of 20 years' imprisonment to a sentence of 17 years' imprisonment, to run from 18 February 2011.