[2021] JMCA Crim 13

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 56/2017

BEFORE: THE HON MR JUSTICE BROOKS P
THE HON MISS JUSTICE EDWARDS JA
THE HON MRS JUSTICE DUNBAR-GREEN JA (AG)

CHRISTOPHER LOCKE v R

Sanjay Smith for the appellant

Miss Paula Llewelyn QC, Director of Public Prosecutions and Miss Alexia McDonald for the Crown

25 February and 22 April 2021

BROOKS P

[1] On 15 June 2017, Mr Christopher Locke was convicted of murder in the Saint Catherine Circuit Court. He was sentenced by the learned judge to life imprisonment with the stipulation that he serve 40 years before becoming eligible for parole. He filed an application for leave to appeal from his conviction and sentence. A single judge of this court refused his application in respect of the conviction but granted it in respect of the sentence. He applied to renew, before the court, his application in respect of the conviction. At the hearing of the application and the appeal, his counsel, Mr Smith, indicated that Mr Locke was only pursuing his appeal against sentence.

[2] On 25 February 2021, after hearing submissions and considering the material, we ordered that:

i. The appeal against sentence is dismissed.

ii. The sentence imposed by the learned judge is affirmed.

iii. The sentence is to be reckoned as having commenced on 22 June 2017.

[3] We promised, at that time, that we would give reasons for our decision, this judgment is a fulfilment of that promise.

Background

[4] On 30 October 2011, Mr Locke went unannounced to the home of Ms Sanchez Clayton, with whom he previously had an intimate relationship. A man was with her at the time that he entered the house. Mr Locke became aggressive and the man left. A dispute and fight ensued between Ms Clayton and Mr Locke, in which Mr Locke was the aggressor. He threatened to kill her. He fetched a piece of pipe from his car, and used it to either poke or hit her. He then threw a stone at Ms Clayton and broke a glass window on the house. In return, Ms Clayton and her sister threw stones at his car. Mr Locke then left in his car. About 15 minutes later he returned to the house on foot. He chased Ms Clayton into her bedroom, threw a flammable liquid on her and set her on fire. He then left the house. Ms Clayton was taken to the hospital but died there, from her injuries, approximately three weeks later.

Submissions

[5] Mr Smith submitted that the sentence imposed by the learned judge was manifestly excessive as this case would not be considered "the worst of the worst" to merit such a high sentence. Learned counsel contended that when Mr Locke's case is compared to other cases with similar sentences, it is not as gruesome. He relied, in part, on **Massinissa Adams and others v R** [2013] JMCA Crim 59 and **Alton Heath and others v R** [2012] JMCA Crim 61. Learned counsel contended that the learned judge did not adhere to the principles set out in **Meisha Clement v R** [2016] JMCA Crim 26. He argued that the learned judge did not state a range of sentences before arriving at her starting point nor did she state a reason for her starting point. He further argued that she did not consider all the mitigating factors. He submitted that a sentence of 23 years would be appropriate in the circumstances.

[6] Miss McDonald, on behalf of the Crown, submitted that the sentence imposed by the learned judge was not manifestly excessive. Learned counsel argued that the learned judge properly exercised her discretion and arrived at an appropriate sentence in the circumstances. In the absence of any error in the exercise of the learned judge's discretion, learned counsel asserted that the sentence should not be disturbed. Miss McDonald acknowledged that the learned judge did not state a sentencing range but she argued that failure to do so was not fatal.

[7] Learned counsel advanced that this case could serve as a deterrent for these types of offences in society.

The analysis

[8] At the time of Mr Locke's sentencing, the learned judge had the benefit of an antecedent report, evidence from a character witness, a social enquiry report and an expansive mitigation address. She also would have had, at that time, the guidance outlined in **Meisha Clement v R**, but not the Sentencing Guidelines for Use by Judges of the Supreme Court of Jamaica and the Parish Courts, 2017.

[9] Morrison P, at paragraph [41] of **Meisha Clement**, stated the guidance as follows:

> "…
>
> (i) identify the appropriate starting point;
>
> (ii) consider any relevant aggravating features;
>
> (iii) consider any relevant mitigating features (including personal mitigation);
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> (iv) consider, where appropriate, any reduction for a guilty plea; and
>
> (v) decide on the appropriate sentence (giving reasons)."

[10] The learned judge did not strictly adhere to the guidance outlined in **Meisha Clement**, however, her sentence embodied the spirit of the guidance as she identified the:

a. starting point;

b. mitigating features;

c. aggravating features; and

d. time that Mr Locke spent in custody.

[11] The learned judge, at page 280 line 21 to page 281 line 1, expressed that:

> "The offense [sic] is one which has been described as a **gruesome crime** and there is no dispute as to that. If one were to look at it for what it is worth one could say that perhaps that is **one of the worst kinds of death that could be meted out to any and all**." (Emphasis supplied)

[12] This view, undoubtedly, was the reason the learned judge's starting point was 50 years. She then considered the aggravating and mitigating features, as well as the time Mr Locke spent in custody and arrived at a pre parole period of 40 years. F Williams JA in **Paul Brown v R** [2019] JMCA Crim 3, after reviewing numerous authorities in relation to murder, concluded, at paragraph [8], that the range of sentencing is between 25 years and 45 years' imprisonment. The learned judge's sentence was therefore within the usual range of sentences for murder.

[13] The cases to which Mr Smith referred as reliable guides to an appropriate sentence, do not in any way resemble the present case. **Massinissa Adams and others v R** involved the shooting death of a senior police officer in a case of home invasion. **Alton Heath and others v R** involved the rape, further degrading, and killing of two women. Whereas each case has its peculiar level of cruelty and inhumanity, it is possible to find a more appropriate guide.

[14] The facts of **Briston Scarlett v R** [2012] JMCA Crim 37, closely resemble the instant case. Mr Scarlett made sexual advances to Miss Barbara Benjamin, who rejected them. One day Mr Scarlett went to her house, and, from outside, set fire to a room where Ms Benjamin, her boyfriend and her roommate were. All three were hospitalised with

burn injuries, but the roommate later died from her injuries. This court affirmed a sentence of imprisonment for life, with the stipulation that Mr Scarlett should serve 30 years' imprisonment before becoming eligible for parole.

[15] In the light of the "gruesome" (to use the learned judge's description) nature of Mr Locke's conduct and the numerous aggravating features, beyond those that existed in **Briston Scarlett**, it cannot be said that the learned judge was plainly wrong for imposing the sentence that she did. The aggravating features which the learned judge considered, included the length of time that Ms Clayton suffered in "immeasurable pain", the fact that Ms Clayton was his former girlfriend for a considerable period, how young Ms Clayton was (24 years), the premeditation of the offence and the fact that Mr Locke threw the flammable liquid directly on Ms Clayton. She also found that the need to deter this kind of killing which has recently plagued the nation was also a relevant factor. Accordingly, the learned judge did not incorrectly exercise her discretion, so as to warrant this court's interference with the sentence imposed.

Summary and Conclusion

[16] At the time of Mr Locke's sentencing, the learned judge had the benefit of the guidance outlined in **Meisha Clement**. For the most part, the judge adhered to that guidance and arrived at a sentence that was within the usual range of sentences for this offence. The sentence is therefore not manifestly excessive and the appeal against sentence should be dismissed. It is for these reasons that we made the orders at paragraph [2] herein.