[2012] JMCA Crim 42

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 80/2010

BEFORE: THE HON MR JUSTICE MORRISON JA
THE HON MISS JUSTICE PHILLIPS JA
THE HON MRS JUSTICE McINTOSH JA

DURRANT MORRIS v R

Leroy Equiano for the applicant

Miss Dahlia Findlay for the Crown

28 May 2012

MORRISON JA

[1] In this matter, the applicant was charged initially on an indictment for the offence of murder. The particulars of that charge were that on 13 January 2010 in the parish of St Catherine, he murdered Shantel Reid. To this indictment, the applicant pleaded not guilty of murder, but guilty of manslaughter, and the verdict of manslaughter was accepted by the Crown based on the facts of the case.

[2] The facts as outlined by the learned Crown Counsel were that on Thursday, 14 January 2010, sometime in the course of the morning, the body of Shantel Reid, a 34 year old bar operator, was found at her home on a bedroom floor with a white shoe-

lace tied around her neck. It appeared that she had been last seen the day before at about 6:00 o'clock in the evening, in the company of the applicant, with whom she had an affair. The matter came to the attention of the police and in due course the applicant himself came to the attention of the police. It appeared, from a statement made by the applicant to the police, that on 13 January 2010 an argument had developed between himself and the deceased. She had apparently planned to go abroad and the applicant was displeased with this. He was incensed by the thought, it seems, of her going abroad and leaving him, and an argument developed.

[3] According to the applicant's account to the police, the deceased bit him, whereupon he held her around the neck and strangled her until she was dead. He then put the shoe-lace around her neck in an attempt to cover up what had happened. We understand from that, that in fact, the shoe lace itself did not play a part in the killing, but that she was strangled manually.

[4] The applicant having pleaded guilty, the Crown indicated to the court that it had no evidence to refute his account of what had happened and on that basis the matter proceeded to sentence. From the antecedents that were given to the court, prior to sentencing, it appears that this applicant was 41 years old at the time of the offence; he was himself a married man and the father of three children; he had attended St Catherine High School for a total of five years; and he had been consistently employed himself travelling back and forth to the United States of America. It was reported that

he was a member of the Holiness Christian Church in Ensom City, Spanish Town and that there were no previous convictions recorded against him.

[5] In mitigation of sentence, Mr Donald Bryan, who appeared for him at trial, we would have to say with great energy and commitment as did Mr Equiano on his appeal, made a plea in mitigation in which, as Mr Equiano has readily acknowledged today, and the court accepts, he said everything to the judge that could possibly be said in the applicant's favour. The learned trial judge, regrettably without giving any indication of what factors she considered to be significant, sentenced the applicant to 15 years' imprisonment.

[6] From this conviction and sentence the applicant seeks leave to appeal on the ground of sentence only. His application first went before the learned single judge of the court on 12 July 2011, who took the view that the facts of the case disclosed, that the applicant had taken the life of the deceased because she decided to end the relationship with him. In those circumstances, notwithstanding the guilty plea, a sentence of 15 years' appeared to the judge to be highly appropriate and could not at all be regarded as manifestly excessive. As is his right, the applicant has today renewed his application for leave to appeal before this court and on this occasion, as we have already indicated, he is represented by Mr Leroy Equiano.

[7] Mr Equiano's submission is that, bearing in mind the applicant's plea of guilty and the fact that this is a prosecution, which on the face of it may not have been able to get off the ground without the applicant's confession, the sentence of 15 years'

imprisonment was manifestly excessive, given that the applicant had not only pleaded guilty but had from the very outset of the investigation confessed his guilt and, if he had not admitted his acts, the case would still be unresolved. His conduct thus saved a lot of investigative time and by pleading guilty, he saved the court a lot of time.

[8] Mr Equiano acknowledged that the death of another is a serious aggravating factor, but submitted that this must be weighed against the mitigating factors in favour of the applicant. We were also urged to take into account that the applicant had no previous conviction. In support of these submissions, Mr Equiano referred us to two decisions of this court. The first one to which he referred us was **R v Icilda Brown** (1990) 27 JLR 321. In that case, the appellant from a conviction of manslaughter in a domestic violence case was actually a woman. She had, it appeared, pursued her common law husband from the home where they lived, to their neighbours' home and, during the struggle, her common law husband was stabbed. The appellant appealed against her conviction on a number of grounds, which were rejected. However, the court also considered the remaining ground that the sentence of 10 years' imprisonment at hard labour, which had been imposed on the appellant, was excessive. By a majority, the submission was accepted. Downer JA said this:

> "This was a domestic incident and in our experience, that is, to say, the majority view is that the range of sentences in these instances vary [sic] from five to seven. Mr Fairclough could show us no reason why the lower range should be applied in this case and therefore we have varied the sentence from ten years to seven years at hard labour."

In that case on the basis that it was a domestic incident, the appellant's sentence was reduced from ten to seven years.

[9] The other case referred to by Mr Equiano was **R v Nathan Davidson** (SCCA 185/1988, judgment delivered on 16 January 1989). That was a case in which the applicant, having pleaded not guilty to a charge of murder, pleaded guilty to manslaughter and was sentenced to 12 years' imprisonment at hard labour. The applicant had apparently accosted the deceased, who was riding a bicycle, at 3:30 in the morning. He asked the deceased for a ride, which was refused. The applicant pursued his victim after this refusal and held on to the bicycle. There was a tussle, the applicant pulled a knife from his pocket and pushed it into the left chest of the deceased, who died from a 4 inch deep stab wound to his left chest, which penetrated the right ventricle of his heart. Carey JA said this:

> "This applicant is an extraordinarily fortunate man. Learned Crown Counsel and indeed the learned trial judge accepted this plea of guilty to manslaughter on the basis that the question of intent would arise and would have to be left to the jury. The learned trial judge in the course of his address to the applicant when he was imposing sentence indicated that provocation could have arisen on the facts."

[10] The court obviously did not see the matter in that way, but in any event, was in no doubt that the sentence of 12 years' imprisonment could not be described as manifestly excessive in those circumstances. We can see why, because on those facts

a successful prosecution for murder appeared to be entirely within the realm of possibility.

[11] In the instant case, we have considered Mr Equiano's submissions very carefully. We have taken into account, as he asked us to do, the fact that this was a crime of passion, "a domestic incident," as the offence in the **Icilda Brown** case was said to be. We nevertheless think that in a case such as this, in which there was a completely unprovoked killing of the deceased, it cannot be said that a sentence of 15 years' imprisonment is manifestly excessive.

[12] The court takes into account the fact that there must be some kind of proportionality in sentencing generally across the whole range of criminal prosecutions. It is relevant to bear in mind that, in this jurisdiction, sentences of 15 years' imprisonment for the offences of robbery with aggravation, wounding with intent and shooting with intent are not unusual. In those circumstances, we cannot say that a sentence of 15 years' imprisonment for an unprovoked killing can be said to be manifestly excessive.

[13] However, before leaving the case we must comment on a matter that attracted the attention of both the learned single judge and Mr Equiano, which is that the learned trial judge, in response to Mr Bryan's spirited plea in mitigation, gave absolutely no indication of her reason for imposing the sentence which she did. While we do not know of any rule that a judge is obliged to give reasons for pronouncing a particular sentence, we consider that it might nevertheless, be helpful to the parties,

the public, the legal profession and, hardly least of all, to this court, to know what factors might have weighed more heavily in a particular case.

[14] The application for leave to appeal is therefore refused. The sentence of 15 years' imprisonment is to run from 30 October 2010.