[2022] JMCA Crim 11

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MR JUSTICE F WILLIAMS JA
THE HON MR JUSTICE BROWN JA (AG)
THE HON MR JUSTICE LAING JA (AG)

SUPREME COURT CRIMINAL APPEAL NO COA2019CR00027

GAWAYNE THOMAS v R

Linton P Gordon and Obiko Gordon instructed by Frater, Ennis & Gordon Attorneys-at-Law for the appellant

Ms Kathy-Ann Pyke and Mrs Sarahope Cochrane-Spencer for the Crown

18, 19 January and 18 February 2022

LAING JA (AG)

Background

[1] On 29 November 2017, Cleveland McDonald ('the deceased') was walking along the roadway in Wainstead District, Mocho in the parish of Clarendon when he passed the appellant and another person. The appellant indicated to a female witness that he intended to kill the deceased. On 30 November 2017, the decapitated body of the deceased was found outside his house.

[2] The appellant gave a caution statement in which he indicated that he was contracted by a third party to kill the deceased. The sum of that contract was $250,000.00.

[3] On 6 December 2018, the appellant appeared in the Circuit Court holden at May Pen in the parish of Clarendon and pleaded guilty, on the day of his arraignment, to an

indictment charging him with a single count of murder. On 7 February 2019, he was sentenced to 35 years' imprisonment with the possibility of parole after serving 25 years.

The sentencing process in the court below

[4] The sentencing judge highlighted that the crime was gruesome because of the circumstances under which the body was found and the manner in which the murder was committed. She noted that the appellant and the deceased were blood relatives, which made the crime even more heinous. The remainder of the sentencing judge's brief comments are worth reproducing as follows:

> "I note that there is no mental or physical illness and I note as well that the accused man, Mr. Gawayne Thomas, has a previous conviction for violence that he is currently serving a sentence for. The court looks at all these things. I looked at the Antecedent Report. I have looked at the Social Enquiry Report. I have taken into account the time spent in custody by Mr. Thomas, which is approximately one year and one month.
>
> The maximum sentence for this type of offence is usually life imprisonment. I have taken into account the one mitigating feature that I was able to identify and that is that he pleaded guilty at the first possible opportunity.
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> The normal range or the normal starting point for sentencing here is 15 years to life, I have, however looked at the normal range, 15 to life range and looked at the type of offence. I have looked at the things that the law says that I am to look at, any aggravating/mitigating circumstances, previous convictions, the issue of the vulnerable victims, mitigation, the issue of whether or not there was a guilty plea and any level of premeditation that might have existed. All of these things are operating on my mind and I am going to be sentencing Mr. Gawayne Thomas, in the circumstances, to 35 years imprisonment with the possibility of parole after 25 years. That is the sentence of the court."

[5] The appellant applied for leave to appeal his sentence. His application was considered and granted by a single judge of this court.

The grounds of appeal and submissions

[6] On 30 November 2021, the appellant filed the following grounds of appeal:

> "a. The learned Presiding Judge failed to adequately demonstrate how she arrived at the sentence of 35 years imprisonment with the possibility of parole after 25 years, thereby rendering the sentencing exercise as one lacking in transparency and precision.
>
> b. The Learned Presiding Judge failed to adequately demonstrate what deductions of sentence if any was being applied to the Appellant in light of the fact that he had entered a plea of guilty at the first relevant opportunity.
>
> c. The Learned Presiding Judge failed to demonstrate how, if any at all, she applied section 42F of the Criminal Justice (Administration) (Amendment) Act 2015 in arriving at a sentence."

<u>Submissions on behalf of the appellant</u>

[7] It was submitted by Mr Gordon, on behalf of the appellant, that had the sentencing judge correctly applied section 42F of the Criminal Justice (Administration) (Amendment) Act ('CJAA'), this would not have resulted in a term of imprisonment that is greater than 30 years and, as such, the learned judge erred in sentencing the appellant to a term of 35 years. It was further submitted that an appropriate period would have been 30 years. Section 42F of the CJAA provides as follows:

> "42.F Where the offence to which a defendant pleads guilty is one for which the Court may impose a sentence of life imprisonment, and the Court would have imposed that sentence had the defendant been tried and convicted for the offence, then, for the purpose of calculating a reduction of sentence in accordance with the provisions of this Part, a term of life imprisonment shall be deemed to be a term of 30 years."

[8] As it relates to the pre-parole period of 25 years which has been fixed by the sentencing judge, Mr Gordon has accepted the Crown's approach and the appropriate sentence as submitted (to which reference is made in the following paragraphs), subject to the time spent in incarceration prior to this sentence, which was submitted to be six months and three weeks.

Submissions on behalf of the Crown

[9] The Crown has conceded that the approach of the learned sentencing judge was flawed and that she erred in her sentencing of the appellant.

[10] The Crown has submitted that, "having regard to all the circumstances", an appropriate starting point would be in the region of 29 years. To this would be applied a reduction of 30% having regard to the appellant's age and his plea of guilty but balanced against the gruesome nature of the killing "and other things". This would result in a sentence of 20 years' imprisonment and three months. This would be further reduced by the period the appellant spent on remand, which was not as a result of him serving his sentence for unlawful wounding.

Discussion and analysis

[11] We have considered whether the sentence passed by the sentencing judge warrants the intervention of the court, pursuant to section 14(3) of the Judicature (Appellate) Jurisdiction Act which provides that:

> "On an appeal against sentence the Court shall, if they think that a different sentence ought to have been passed, quash the sentence passed at the trial, and pass such other sentence warranted in law by the verdict (whether more or less severe) in substitution therefor as they think ought to have been passed, and in any other case shall dismiss the appeal."

[12] In analysing this issue, due consideration was given to the authority of **R v Ball** (1951) 35 Cr App R 164, at page 165 and the principles espoused therein, which have been repeatedly referred to by this court, that:

> "In the first place, this Court does not alter a sentence which is the subject of an appeal merely because the members of the Court might have passed a different sentence. The trial Judge has seen the prisoner and heard his history and any witnesses to character he may have chosen to call. It is only when a sentence appears to err in principle that this Court will alter it. If a sentence is excessive or inadequate to such an extent as to satisfy this Court that when it was passed there was a failure to apply the right principles, then this Court will intervene."

[13] In **Meisha Clement v R** [2016] JMCA Crim 26, at paragraph [43], Morrison P, in delivering the judgment of the court, detailed the task to be undertaken by the court in imposing a sentence:

> "[43] On an appeal against sentence, therefore, this court's concern is to determine whether the sentence imposed by the judge (i) was arrived at by applying the usual, known and accepted principles of sentencing; and (ii) falls within the range of sentences which (a) the court is empowered to give for the particular offence, and (b) is usually given for like offences in like circumstances. Once this court determines that the sentence satisfies these criteria, it will be loath to interfere with the sentencing judge's exercise of his or her discretion."

[14] These principles have been affirmed and adopted in a number of cases by this court. Subsequent to the judgment of **Meisha Clement v R**, the Sentencing Guidelines for use of Judges of the Supreme Court of Jamaica and the Parish Court were established in 2017.

[15] In **Daniel Roulston v R** [2018] JMCA Crim 20, McDonald-Bishop JA, at paragraph [17], indicated that the following approach and methodology is to be employed:

> "a. identify the sentence range;
>
> b. identify the appropriate starting point within the range;
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> c. consider any relevant aggravating factors;

> d. consider any relevant mitigating features (including personal mitigation);
>
> e. consider, where appropriate, any reduction for a guilty plea;
>
> f. decide on the appropriate sentence (giving reasons); and
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> g. give credit for time spent in custody, awaiting trial for the offence (where applicable)."

[16] The sentencing judge, in this case, identified the sentencing range for the murder as being 15 years' imprisonment to life imprisonment pursuant to section 3(1)(b) of the Offences Against the Person Act. She also noted that "[t]he maximum sentence for this type of murder is usually life imprisonment". She did not determine an appropriate starting point, but explicitly indicated that she considered as the one "mitigating feature", the plea of guilty, along with "aggravating/mitigating circumstances", and saw it prudent to impose a sentence of 35 years' imprisonment with the possibility of parole after 25 years. Although she had stated that she considered that there was a guilty plea, she did not show what deductions she made in respect of it. In the case of **Lincoln McKoy v R** [2019] JMCA Crim 35, the learned trial judge did not employ the sentencing methodology suggested in cases such as **Meisha Clement v R** and **Daniel Roulston v R** and, accordingly, it was not sufficiently demonstrated how he had arrived at the sentence imposed. On that basis, this court held the learned trial judge did err in principle in sentencing the applicant and concluded that it fell on the court to determine the appropriate sentence that ought to have been imposed, after applying the relevant principles.

[17] We acknowledge that, unlike **Lincoln McKoy v R**, the case before us is one in which the appellant had pleaded guilty. Nevertheless, the sentencing judge was still required to demonstrate the appropriate methodology. **Troy Smith et al v R** [2021] JMCA Crim 9 was also a case in which the appellant had pleaded guilty. At paragraph [141] Edwards JA made the following insightful observations:

> "[141] Although the learned trial judge correctly indicated the aggravating and mitigating factors guiding her consideration, she did not indicate a starting point and what deduction she made in respect of the applicant's guilty plea, having stated that she would allow a discount for it, and, similarly failed to indicate a deduction for time spent on remand. The deeming provision in section 42F does not divest the trial judge of her duty to indicate a sentence within the range of like for like, which she would have given had the case gone to trial. It may be that a trial judge decides that 30 years, at the higher end of the scale, is appropriate in a particular case, bearing in mind that the maximum sentence is to be reserved for the most egregious cases, but the trial judge must so state and give reasons for so doing."

[18] In this case, counsel for the appellant has sought to rely on section 42F of the CJAA in advancing his argument that the sentence should not have exceeded 30 years. However, it should be noted that this section does not prohibit the imposition of a sentence of imprisonment of more than 30 years. It creates a legal fiction by which a period of life imprisonment is deemed to be 30 years for the purposes of calculating a reduction of the sentence where the offender pleads guilty and the sentencing judge would have imposed a sentence of life imprisonment had the offender been tried and convicted for the offence of murder. There is, therefore, no statutory restriction on the imposition of a sentence of 35 years by virtue of section 42F.

[19] In our view, although the sentencing judge did not accurately apply the prescribed methodology in choosing a determinate sentence, it was within her discretion to elect a sentence other than life imprisonment. Sections 2(2) and 3(1) of the Offences Against the Person Act provide:

> "(2) Subject to subsection (3), every person convicted of murder other than a person-
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> (a) convicted of murder in the circumstances specified in subsection(1)(a) to (f); or
>
> (b) to whom section 3 (1A) applies,
>
> shall be sentenced in accordance with section 3 (1)(b)."

[20] Section 3(1)(b) reads:

> "**3.-** (1) Every person who is convicted of murder falling within-
>
> (a) ...
>
> (b) **section 2(2), shall be sentenced to imprisonment for life or such other term as the court considers appropriate, not being less than fifteen years**." (Emphasis added)

[21] In **Khoran Thomas v R** [2020] JMCA Crim 22, McDonald-Bishop JA, in addressing the question of whether the trial judge had erred in imposing a sentence of life imprisonment, instead of a fixed term, stated at paragraph [40]:

> "Section 3(1)(b) of the [Offences Against the Person Act] is clear that the learned trial judge was empowered to impose the sentence of life imprisonment or, in the alternative, a fixed term of imprisonment not being less than 15 years. Although the learned trial judge did not explicitly explain her reasons for not imposing a fixed term of imprisonment, this court could not say that she erred in law. When the record of sentences of the court for similar offences of this nature, which was helpfully provided by Crown Counsel, were examined, it cannot be said that the sentence of life imprisonment for an offence of this nature was excessive. There was no basis on which this court could correctly find that the learned trial judge wrongly exercised her discretion in electing the life imprisonment option for this offence and offender. See **Danny Walker v R** [2018] JMCA Crim 2."

[22] The maximum sentence for murder is life imprisonment, which the sentencing judge explicitly noted. The gruesome nature of the crime and the fact that it was premeditated and for reward means that a sentence of life imprisonment would have been demonstrably reasonable and justified. In **Tyrone Gillard v R** [2019] JMCA Crim 4 at paragraph [15] the court observed that:

> "In cases such as: **Maurice Lawrence v R** [2014] JMCA Crim 16; **Troy Jarrett and Jermaine Mitchell v R** [2017] JMCA Crim 38; **Lincoln Hall v R; and Demar Shortridge v R** [2018] JMCA Crim 30, having regard to the particularly egregious nature of the murders involved in those case, the court found that, despite the appellant's guilty plea in each case, a sentence of life imprisonment was appropriate."

[23] If life imprisonment was considered appropriate in those cases in which the appellants have pleaded guilty to murder, then it cannot reasonably be said that a determinate sentence of 35 years in the instant case is inappropriate. It is clear from the reasoning of the sentencing judge that numerous matters, including the plea of guilty, operated on her mind in electing, instead, the sentence of 35 years. At no point in her sentencing remarks did she state that she would have imposed life imprisonment on the appellant if he had been tried and convicted. In such circumstances, section 42F of the CJAA has no applicability to the imposition of the sentence of 35 years' imprisonment.

[24] It follows therefore that the period of 35 years that was imposed was well within the range of possible sentences that the sentencing judge could have justifiably handed down. In the circumstances, we do not accept the submissions of counsel for the appellant that the sentencing judge erred in sentencing the appellant to a period of 35 years' imprisonment. Accordingly, we will not interfere with that term imposed and will assess the appropriateness of the pre-parole period.

<u>The importance of the pre-parole period</u>

[25] Section 3(1)(1C) of the Offences Against the Person Act provides as follows:

> "(1C) In the case of a person convicted of murder, the following provisions shall have effect with regard to that person's eligibility for parole, as if those provisions had been substituted for section 6(1) to (4) of the Parole Act –
>
> > (a) where a court imposes a sentence of imprisonment for life pursuant to subsection (1)(a), the court shall specify a period, being not less than twenty years,

which that person should serve before becoming eligible for parole; or

(b) where, pursuant to section (1)(b), the court imposes –

(i) a sentence of imprisonment for life, the court shall specify a period, being not less than fifteen years; or

(ii) any other sentence of imprisonment, the court shall specify a period, being not less than 10 years,

which that person should serve before becoming eligible for parole."

[26] The clear objective of the legislature in enacting this section is to remove the eligibility for parole for the appellant convicted of murder, as in the case before us, from the operation of the regime provided for by section 6(1) to 6(4) of the Parole Act. In the absence of section 3(1)(1C) the Parole Act would determine the appellant's eligibility for consideration for parole based on a purely mathematical formula.

[27] The period to be served before eligibility for parole is, therefore, a critical component of the sentence for murder as it may determine the amount of time that the convicted person ultimately spends in prison. In cases in which the nature of the offence means that the court is not required to state a pre-parole period, as was the case in **Meisha Clement v R**, the methodology employed results in the court pronouncing one definitive sentence which forms the target of the appeal. Where, however, there is a need for the court to specify and the court does specify a pre-parole period, in the appeal against such sentence, the appellant usually concentrates his efforts on trying to reduce the length of the pre-parole period. This is so, even where a sentence of life imprisonment is imposed (see **Troy Smith et al v R** and **Tyrone Gillard v R)**.

<u>Determining the pre-parole period</u>

[28] In **Kevin Young v R** [2015] JMCA Crim 12, a case decided before the CJAA, the applicant did not challenge the sentence of life imprisonment imposed by the trial judge but asked this court to alter the pre-parole period of 30 years. The court considered the manner in which this exercise should be undertaken. At paragraph [11], the court made the following observations:

> "…In **Maurice Lawrence v R**, the court reiterated that what is required is a balancing of the mitigating and aggravating factors, taking into account the circumstances of the particular offender. The learned sentencing judge in that case, in which the defendant pleaded guilty on a charge of murder, was therefore held to have erred in prescribing a minimum period before parole of 20 years. That period was accordingly reduced on appeal to the statutory minimum of 15 years."

[29] It should be noted that section 42E(4) of CJAA provides as follows:

> "In determining the percentage by which the sentence for an offence is to be reduced pursuant to subsection (2), the Court shall have regard to the factors outlined under section 42H, as may be relevant."

[30] Section 42H provides the factors which the court should consider in determining the percentage by which the sentence is to be reduced on account of the guilty plea. In the case of **Tyrone Gillard v R**, the appellant pleaded guilty and was sentenced to life imprisonment at hard labour with a stipulation that he would not become eligible for parole until he had served 22 years. The main complaint of the appellant was that the sentence was manifestly excessive. The court did not agree that the imposition of a sentence of life imprisonment as opposed to a fixed term was manifestly excessive or done in error. The focus of the court was therefore on the determination of the pre-parole period as is evidenced in paragraphs [15] and [16] as follows:

> "[15]…The issue in this case has arisen in respect of the stipulated pre-parole period. In seeking to arrive at the appropriate pre-parole period, our starting point in those

> circumstances would therefore be 30 years in accordance with section 42F of the CJAAA.
>
> [16] In determining the actual percentage by which the sentence should be reduced within the range indicated in section 42E(2)(b) (and so, in this case, the period after which the appellant would become eligible for parole), a judge should have regard to the factors outlined in section 42H…"

[31] **Tyrone Gillard v R** demonstrates that the previously existing "balancing exercise" that was necessary to determine the pre-parole period, which was described in **Kevin Young v R**, has now been given statutory assistance pursuant to section 42E(2)(b) of the CJAA which provides a possible range of the discount from which an accused who pleads guilty may benefit. Section 42H, on the other hand, identifies the considerations which the court may take into account in determining where within that range the discount to the offender should lie. The court accepted that life imprisonment would have been an appropriate sentence, and a starting point of 30 years was in accordance with section 42F of the CJAA in seeking to arrive at an appropriate pre-parole period. The court held that, based on the gruesome nature of the killing and the petty circumstances which led to it, the appellant ought not to benefit from the maximum discount of 33.3% by virtue of section 42E(2)(a) and held that a 30% reduction would be more appropriate.

[32] In **Troy Smith et al v R** the court held that a sentence of life imprisonment would have been an appropriate sentence had the applicant in that case been convicted after a trial. Counsel on behalf of the applicant (Troy Smith) conceded that a sentence of life imprisonment was appropriate, but argued that the period of 25 years before the appellant could be eligible for parole should be reduced by 15%, to 21.25 years pursuant to section 42E of the CJAA. The court also found that 15% was the maximum benefit the appellant could have obtained since he pleaded guilty after the trial had commenced.

[33] At paragraph [142], Edwards JA explained the appropriateness of a sentence of life imprisonment in the circumstances of that case:

> "Undoubtedly, owing to the egregious nature of the offence, and the trivial circumstances of the murder, being that the deceased was shot point blank in the head by Troy Smith, simply because he wanted the deceased's chain, and also the high prevalence of this type of offence in Jamaica, life imprisonment would have been an appropriate sentence had Troy Smith been convicted after a trial. This is deemed to be 30 years for the purpose of calculating a reduction of the sentence on account of the guilty plea, pursuant [to] section 42F of the CJA. The learned trial judge however, would still have had to consider what was the appropriate period for the appellant to serve before being eligible for parole, if he had gone to trial, within a range of up to 30 years and taking into account, mitigating and aggravating factors."

[34] Having referred to the approach to sentencing indicated by Morrison P (at paragraph [41] of **Meisha Clement v R**), the court at paragraph [127] stated as follows:

> "[127] This approach, which has since been incorporated into the Sentencing Guidelines, is in keeping with the dictum of Harrison JA in **R v Everald Dunkley**, at page 4, that the sentencing judge ought to 'make a determination, as an initial step of the length of the sentence, as a starting point, and then go on to consider any other factors that will serve to influence the sentence, whether in mitigation or otherwise'. **This guideline is equally applicable to sentencing after a guilty plea, as it is to sentencing after a trial and conviction.**" (Emphasis supplied)

[35] If any confirmation is needed of the accuracy of the statement highlighted in bold, in the quote above, resort may be had to **Lincoln McKoy v R** in which there was a trial resulting in a conviction for murder and the court adopted the use of the Sentencing Guidelines commencing with a starting point.

[36] It is clear from the record that the appellant expressed his wish to plead guilty on the first relevant date (that is on the day of his arraignment). There is a plethora of cases in which the appellant has pleaded guilty to murder and there was the imposition of a sentence of life imprisonment. However, the minimum period of imprisonment to be served before parole in these cases range between 18 years (see **Ryan McLean**,

Richard Gordon and **Christopher Counsel v R** [2021] JMCA Crim 21) and 29 years in **Lincoln Hall v R** [2018] JMCA Crim 17 (albeit a one year credit was given for time spent in custody awaiting trial).

[37] In determining the appropriate starting point, we have had regard to the minimum sentence of 10 years fixed by statute and the record of cases from this court which established the range of between 18 to 29 years as the appropriate period to be served before eligibility for parole in these cases. Having considered the fact that this was a premeditated murder of an unusually gruesome nature for financial reward, we are of the view that a sentence within the upper range of between 25 to 30 years would be appropriate with a starting point of 29 years. Both counsel for the appellant and counsel for the Crown have submitted that this is an appropriate starting point.

[38] There are two aggravating factors that we have considered which were not taken into account in determining the starting point, namely the appellant's previous conviction for unlawful wounding, an offence of violence and his relationship to the deceased. These aggravating factors would lead to an upward adjustment of the starting point. We have, however, found as mitigating factors his expression of remorse as well as the report of his difficult childhood. These would lead to a corresponding downward adjustment of the starting point.

[39] In taking account of the aggravating and mitigating factors, we conclude that the aggravating factors outweigh the mitigating factors. Accordingly, we are of the firm view that had the appellant not pleaded guilty and instead gone to trial, a stipulation that he should serve 30 years as the minimum period before his eligibility for parole would have been reasonable.

[40] However, the guilty plea entered by the appellant is a significant mitigating factor that requires special treatment. Reference has previously been made to section 42E(2) of the CJAA which provides that where a defendant pleads guilty to the offence of murder, falling within section 2(2) of the Offences Against the Person Act, the court may reduce

the sentence by up to 33.3%, where the accused indicates to the court on the first relevant date, that he wishes to plead guilty to the offence.

[41] In considering the percentage discount from which the appellant should benefit the court is required, by section 42H of the CJA, to consider a broad range of matters which, as the court in **Troy Smith et al v R** acknowledged at paragraph [148], would also encompass some of the mitigating and aggravating factors relevant to the offender and the offence.

[42] Section 42H is in the following terms:

> "42H. Pursuant to the provisions of this Part, in determining the percentage by which a sentence for an offence is to be reduced in respect of a guilty plea made by a defendant within a particular period referred to in 42D(2) and 42E(2), the Court shall have regard to the following factors namely –
>
> (a) whether the reduction of the sentence of the defendant would be so disproportionate to the seriousness of the offence, or so inappropriate in the case of the defendant, that it would shock the public conscience;
>
> (b) the circumstances of the offence, including its impact on the victims;
>
> (c) any factors that are relevant to the defendant;
>
> (d) the circumstances surrounding the plea;
>
> (e) where the defendant has been charged with more than one offence, whether the defendant pleaded guilty to all the offences;
>
> (f) whether the defendant has any previous convictions;
>
> (g) any other factors or principles the Court considers relevant."

[43] In considering the percentage discount to be applied, we have noted the circumstances of the commission of the offence. However, separately and deserving of independent consideration is the expected shock and psychological impact of such a heinous crime on the community in which the appellant lived and, more specifically, on members of the family of the deceased, of which the appellant was also a part. We also had regard to his previous conviction for violence against the person.

[44] Factors that are relevant to the appellant and in his favour, which we have considered, are the fact that he expressed remorse and the difficult childhood he reportedly experienced.

[45] Having considered these matters, we are of the view that the maximum discount of 33.3% is inappropriate. A reduction in the sentence to the fullest extent permissible by law would be disproportionate to the seriousness of the offence and shock the public conscience. It is our conclusion that a discount of 15% is wholly appropriate and justified. This would result in a discount of four years and six months thereby reducing the sentence to be served before eligibility for parole to a period of imprisonment of 25 years and six months.

Time spent on remand

[46] It is now settled law in this jurisdiction that an appellant should receive the full discount for the time spent on remand before trial which was not as a result of him serving a sentence for another matter. In the instant case, there was initially a difficulty in establishing from the record the time the appellant spent on remand, but that period has now been confirmed at seven months. This would further reduce the period of 25 years and six months to 24 years and 11 months.

[47] In considering what is an appropriate sentence in an effort to determine whether the sentence imposed by the judge was manifestly excessive, the court is also required to consider other cases to achieve consistency, while of course taking into account the particular circumstances of the appellant. In the case of **Tyrone Gillard v R**, for example,

the court set aside the pre-parole period of 22 years that was imposed by the sentencing judge and substituted it with a period of 21 years but gave the appellant a further credit for the one year he had spent in custody. In that case, the appellant had summoned a group of persons to assist him in the commission of a murder in which the deceased was attacked, beaten and chopped to death.

[48] On the other hand, in **Lincoln Hall v R**, the court did not interfere with the sentencing judge's decision that the appellant should not receive any discount for the guilty plea and stipulated that he serve 30 years before being eligible for parole. The court found the sentence to be wholly appropriate having regard to the circumstances of that case in which the deceased, while at home at night with his girlfriend, was killed during a home invasion by the appellant, who had a previous conviction for rape.

Conclusion

[49] In **Lincoln McKoy** v **R**, McDonald-Bishop JA observed at paragraph [54] that even though the learned trial judge did not "demonstrably conduct the requisite analysis of the relevant principles of law and apply the accepted mathematical formula…it cannot reasonably be said that the sentence he imposed is manifestly excessive to warrant the intervention of this court". In that case, the learned trial judge had stipulated a minimum of 25 years' imprisonment before parole, and the court accepted that it was well within the established range of sentences for murder committed in these circumstances. We are of the view that this case ranks among the most egregious cases of murder that one is likely to encounter, ameliorated slightly only by the fact that it was not done in view of any member of the public. As in the case of **Lincoln McKoy v R**, although the sentencing judge did not demonstrate the methodology she employed in arriving at the sentence of 35 years and in stipulating that the appellant serve a pre-parole period of 25 years, it cannot be said that the sentence imposed is manifestly excessive and one which warrants this court's intervention, when assessed against our application of the requisite methodology by which we arrived at a sentence of approximately 25 years before eligibility for parole.

Order

[50] Accordingly, we make the following orders:

1. The appeal against sentence is dismissed.

2. The sentence of 35 years' imprisonment with the stipulation that the appellant serve a period of 25 years before becoming eligible for parole is affirmed.

3. The sentence is to be reckoned as having commenced on 7 February 2019.