

COMMONWEALTH OF THE BAHAMAS

CRI/VBI NO.228/11/2020

IN THE SUPREME COURT

Criminal Division

B E T W E E N

DIRECTOR OF PUBLIC PROSECUTIONS

AND

TAMAR TEANDRE FORBES

BEFORE:

Mr. Justice Andrew Forbes

APPEARANCES:

Mrs. Ashely Carroll & Mr. Sean Novell Smith

c/o the Director of Public Prosecutions

Mr. Mario Gray on behalf of Mr. Tamar Forbes

HEARING DATE:

10 September, 2024

SENTENCING DATE:

18 September, 2024

SENTENCING

BACKGROUND

[1.] On the 27th February 2024 the Convict appeared the Criminal Court and entered a guilty plea to the charge of Manslaughter and not guilty to the offence of Murder after Counsel for the Convict and Counsel for Office of Director of Public Prosecution had a discussion.

[2.] The Court then directed the empaneled jury to return a guilty verdict with respect to the plea. The Jury returned a (9-0) verdict as directed. The Crown then introduced the facts and those facts were accepted by the Convict. The Court, subsequently, convicted him on the 24th February 2024 for the Offence of Manslaughter contrary to section 293 of the Penal Code.

[3.] The Convict who was represent by Counsel Mr. Mario Gray requested that the Convict should be provided with a probation report to aid in of sentencing. A probation report was in fact prepared by Chief Probation Officer Ms. Wynelle Goodridge and Mr. Laish Boyd Jr. as a Trainee Probation Officer and dated the 24th July, 2024.

[4.] The report sourced information from the Convict - Tamar Forbes, his mother - Ms. Tosca Forbes, his grandmother - Ms. Rosena Forbes, granddaughter of the victim - Ms. Dlisha Etienne and Senior Probation Officer of the Department of Rehabilitative Welfare Services - Ms. Materna Carey who in fact interviewed the Convict at the Bahamas Department of Corrections Services (BDCOS). The report also sought to rely upon information received from the Criminal Records Office.

[5.] Counsel for the DPP made recommendations as to an appropriate sentence and Counsel for Mr. Mario Gray made pleas in mitigation.

FACTS

[6.] The brief facts were extracted from the statements of the Officers conducting the investigations as well as the statements made by the Convict to the Police when questioned.

[7.] According to Officer Ramando Russell, on the 20th June 2020 he reported receiving information from another Officer. That as a result of the information he along with another Officer went to the Eight Mile Rock Police Station and spoke to Sargent 1849 Smith who was investigating the discovered deceased body of an elderly female. That later that day he would have attended the residence of the Convict. Officer Russell then spoke to the Convict and his mother and advised the Convict he was suspected of murder.

[8.] That the Convict was taken to Eight Mile Rock Police Station along with his mother and she was advised as his guardian she was obligated to be present. That Officer Russell indicated he was present during a record of interview which took place involving the Convict, his mother and Sargent 1849 Smith. That this record of interview was also recorded and that those records were secured and marked for future identification.

[9.] That during the investigation the Officer Smith spoke to several individuals and received additional information. That Sargent Smith noted that during the record of interview conducted with the Convict, his mother, and Officer Russell that the convicted admitted to stabbing the elderly woman in her neck with a knife he claimed that there was an altercation between him and the woman. That after she fell to the ground he dragged her into some nearby bushes and covered her up with tree branches and a piece of plywood.

[10.] There was also statements the Convict made a statement to another juvenile about what had occurred that there was no need to have that individual called as a witness and certainly he would have been expected to recount what the Convict had communicated to him.

[11.] According to the information supplied in the Probation Report, the Convict was born in New Providence and is the third of five children. The Convict was educated at C.W. Sawyer primary, Aubrey Sayles Primary, and H.O. Nash Junior High School and he was forced to discontinue his education after being suspended for fighting. He returned to Grand Bahama and was enrolled at Bahamas Technical and Vocational Institute (BTVI) in the electrical installation certificate program. He had completed the Math and English preparatory program before being arrested and charged with the current offence. The Convict has been incarcerated since the age of sixteen (16). He has never been employed and he has no children. He would have attended church with his mother. He does not consume alcohol, however, admits to smoking marijuana which he commenced at age fifteen (15). He acknowledges no gang involvement. Moreover, he loves to swim and engage in boxing.

[12.] The mother of the Convict - Ms. Tosca Forbes, described her son as a loner who did his own thing. That he is good with his hands and enjoys fixing electrical devices and has a positive relationship with his siblings. She said he was playful and funny and did not experience issues with him until his first arrest in New Providence. According to Ms. Forbes, her son then started spending more time with negative influences and engaging in further destructive behavior. When asked about her son's predicament she expressed shock and empathy for the family of the victim.

Noting she is aware that her son must pay for his actions and that justice must prevail but wants the Court to exercise mercy. According to Ms. Forbes, she had a close relationship with a member of the victim's family. That after learning of the incident and her son's arrest, she and her mother visited, cried and prayed with the family.

[13.] Ms. Rosena Forbes the maternal grandmother of the Convict described the Convict as a darling and quiet. That he would live with her anytime his mother went to New Providence. She recalled him being mannerly and extremely helpful in the home, which she greatly misses. Ms. Rosena Forbes is devoutly Christian and expresses the view that God is always in control and wants her grandson to take responsibility for his actions. She recalled her and her daughter attending the home of the victim's family to apologize and to express their sympathy. That her desire is that while serving his sentence her grandson will improve himself and improve his relationship with God.

[14.] The Court notes that in the Probation report the victim's maternal granddaughter noted she was exceptionally close with her grandmother and was very concerned when she did not return home from running errands. That they went searching for her and discovered her. She notes that the dynamics of the family has changed as previously everyone congregated at their grandmother's house but since her death that has since deteriorated. Noting she would like to see the Convict receive a stiff penalty so he cannot take another life again.

LAW

[15.] The Penal Code prescribes as follows:

“290. Whoever intentionally causes the death of another person by any unlawful harm is guilty of murder, unless his crime is reduced to manslaughter by reason of such extreme provocation, or other matter of partial excuse, as in this Title hereafter mentioned---291. Sentence for murder. (1) Notwithstanding any other law to the contrary-- (a) every person who is convicted of murder falling within section 290(2)(a) to (i) shall be sentenced to death or to imprisonment for life; (b) every person convicted of murder to whom paragraph (a) does not apply- (i) shall be sentenced to imprisonment for life; or (ii) shall be sentenced to such other term given the circumstances of the offence or the offender as the court considers appropriate being within the range of thirty to sixty years imprisonment: provided that where a person under eighteen years of age is convicted of murder he shall not be sentenced in accordance with this subsection but instead subsection (4) shall apply to the sentencing of such person....”

[16.] In this case the convict accepted a plea of guilty of Manslaughter albeit he was charged with Murder and in this case the Penal Code section 293 states as follows: “**293. Whoever commits manslaughter by negligence shall be liable to imprisonment for five years; and whoever commits manslaughter in any other case shall be liable to imprisonment for life...**”

[17.] In deciding the appropriate sentence consideration must be given to the general principles of sentencing Halbury’s Laws Third ed. Vol 11(2) at paragraphs 1188 notes:

“The aims of sentencing are now considered to be retribution, deterrence and protection and modern sentencing policy reflects a combination of several of all of these aims. The retributive elements is intended to show a public revulsion of the offence and to punish the offender for his wrong conduct. Deterrent sentences are aimed at deterring not only the actual offender from further offences but also potential offenders from breaking the law. The importance of reformation of the offender is shown by growing emphasis laid upon it by much of modern legislation. However, the protection of society is often overriding consideration. In addition reparation is becoming an important objective in sentencing.”

Each case must depend on its own circumstances and various factors must be considered by the court in deciding which of the principles should predominate.

[18.] In the Court of Appeal case of **Prince Hepburn v. Regina SCCrApp. No. 79 of 2013**, Adderley JA (Retired) offered the following guidelines as to sentencing where he said at paragraph 36:-

“In exercising his sentencing function judicially the sentencing Judge must individualize the crime to the particular victim so that he can, in accordance with his legal mandate, identify and take steps into consideration the aggravating as well mitigating factors applicable to the particular perpetrator in the particular case. This includes but not limited to considering the nature of the crime and the manner and circumstances in which it was carried out, the age of the convict, whether he has past convictions of a similar nature and his conduct before and after the crime was committed. He must ensure that having regard to the objects of sentencing, retribution, deterrence, prevention and rehabilitation that the tariff is reasonable and the sentence is fair and proportionate to the crime.”

SUBMISSIONS

[19.] Mr. Gray on behalf of the Convict suggest that the Convict is a relatively young man and still redeemable. That the Convict plead guilty at the earliest opportunity. That the Convict’s actions were not premeditated and that the Convict lost his self-control. Mr. Gray relied on the cases of **The Attorney General v Larry Raymond Jones** SCCrApp. Nos. 12,18 and 19 of 2007, **Don Brennen v Director of Public Prosecutions** SCCrApp No. 94 of 2019 and 84 of 2019 **Zaria**

Burrows v Director of Public Prosecutions SCCrApp No. 96 of 2021, He further suggests a sentence of 8-10 years with consideration of the 4 years the Convict spent on remand.

[20.] Mrs. Ashely Carroll on behalf of the Director of Public Prosecutions notes that the Convict The Crown notes that there are mitigating and aggravating factors. They note that the Convict was a young man was not employed at the time of his arrest. They also note the previously noted antecedents. The Crown relied upon the cases of **Marvin Edgecombe v. The Director of Public Prosecutions SCCrApp. No. 145 of 2021** here the appellants were convicted on Manslaughter and Edgecombe was sentenced (25) Twenty Five years for manslaughter. His convictions and sentences being upheld by the Court of Appeal. And the case of **Lorenzo Pritchard v The Director of Public Prosecutions SCCrApp. No. 130 of 2020** again a similar offence of Manslaughter where the defendant was convicted of shooting the victim at a crowded nightclub establishment. He was acquitted of Murder but convicted of manslaughter and the defendant was sentenced to twenty (20) years. Also, the Crown sought to rely upon the case of **Valentino Dorsette v. Regina SCCrApp. No. 224 of 2016**, where the defendant was engaged in a robbery when a person was killed he was charged with Murder and Attempted Armed Robbery and was convicted of manslaughter and Attempted armed robbery and sentenced to Twenty Five (25) years for manslaughter the sentence and conviction was upheld. At the closure of its submissions the Crown recommended that the Convict should serve Twenty Five (25) years at BDOCS. Further submitted were the cases of **The Attorney General v Larry Raymond Jones et al** SCCrApp. Nos. 12,18 and 19 of 2007 and **Raphael Neymour v The Attorney General** SCCr. App. No. 172 of 2010 all submitting a sentence between the 18 to 35 year mark.

ANALYSIS & DISCUSSION

[21.] In individualizing this case to the present convict, Mr. Tamar Forbes, appeared to have cooperated with the investigation. He did participate in the Record of Interview and gave a full statement while also taking Officers to various locations. He also elected to plead guilty at the very earliest opportunity. These certainly all inure to his credit.

[22.] The Convict does appear to demonstrate remorse. In this case the question is what would be the appropriate sentence in the case of manslaughter? It would be noted that there was considerable discussion most recently in the Court of Appeal regarding sentencing guidelines for manslaughter.

[23.] The Court of Appeal in Marvin Edgecombe (supra) specifically paragraphs 84 & 85 said the following:

"84. It appears that by "reducing" the appellant's sentence by five years, the Judge had effectively sentenced the appellant to twenty-five years' imprisonment but took the time he had spent on remand into consideration. I note that the Judge made reference to this Court's decision in Larry Raymond Jones (Supra) where a range of eighteen years to thirty-five years' imprisonment was discussed as an appropriate range in manslaughter cases. Sawyer, P stated at paragraph 15: "15. On the other hand it must be noted that over the past 7 years this Court has set guidelines in respect of persons convicted of manslaughter. Sentences passed or upheld by this court during that period range from 18 years to 35 years imprisonment, bearing in mind the character of the convicted person, the circumstances in which the offences was committed and whether convicted person showed any remorse (e.g. By pleading guilty at the earliest opportunity) to name some of the usual considerations to be taken into account by the sentencing judge." 85. However, the Court, differently constituted, has in subsequent decisions, thrown some doubt on the range suggested by Sawyer, P. for example, Claude Lawson Gray (Supra) at paragraphs 20 et seq; Ashley Hield v Regina SCCrApp. No. 172 of 2019 at paragraphs 70 and 83; and Lorenzo Pritchard v Regina SCCrApp. No. 130 of 2020 at paragraph 28..."

[Emphasis mine]

[24.] The Court also takes notes of the Court of Appeal in Lorenzo Pritchard (supra) from paragraphs 25 to 33 as instructive:

25. The respondent places great reliance on Sawyer, P's decision in Larry Raymond Jones (Supra) when suggesting that that case provides a guideline for judges when sentencing a convict for manslaughter. However, doubt was thrown on that statement by a subsequent majority decision of this Court, differently constituted: Barnett, P Moree, CJ and Crane-Scott, JA. Moree, CJ dissenting on that discrete issue. In Claude Lawson Gray (Supra) Barnett, P stated at paragraphs 21 through 23: "21. Although in paragraph 15 the Court said "it must be noted that over the past 7 years, this court has set guidelines in respect of persons convicted of manslaughter", I have not seen any judgment of this Court prior to the decision in that case which sets or purports to set guidelines for sentences for manslaughter. None were cited in that paragraph or in that judgment. There is nothing in that paragraph or in that judgment which indicates how the guidelines should be applied by a sentencing judge. For example, should a homicide arising out of a domestic dispute or drug abuse be treated in the same manner as a homicide arising out of a criminal act such as robbery where in the former cases there was no intention to kill? Should a conviction for manslaughter by way of provocation have a minimum of 18 years unless there are exceptional circumstances? Should a manslaughter conviction arising out of the use of a gun or knife be treated in the same way as a homicide caused by an otherwise non-lethal weapon? 10 22. No such guidance as one may expect from a court setting authoritative sentencing guidelines to be followed by lower courts or even itself is to be found in that paragraph or in the judgment. 23. In my judgment, it is unlikely that the Court was intending by that paragraph to impose a range which was intending to bind judges. It is also unlikely that the Court was laying down as guidance to sentencing judges a minimum sentence of 18 years for the offence of manslaughter, save in exceptional circumstances. If the Court was seeking to establish an authoritative guideline for manslaughter it is unlikely that the Court would have limited itself to a review of only the immediate seven years prior to the judgment; nor in my judgment would it have ignored sentences passed by trial judges which have not been appealed to this Court." 26. The president then made reference to a number of cases where the Court had not interfered with sentences that fell well below the purported guideline range of sentences. Crane-Scott, JA associated herself with the view of the President and provided observations in support of

his opinion. At paragraphs 185 to 187 Crane-Scott, JA said as follows: "185. Understood in this way, it is very doubtful whether paragraph 15 of Larry Raymond Jones was ever intended to establish a comprehensive sentencing "guideline" for manslaughter offences. Indeed, the Court was advertent to the "guidelines" which had already been set in the preceding 7 years. I completely agree with Sir Michael who, at paragraph 21 (above) observed that there is no judgment of the Court prior to Larry Raymond Jones which purports to set guidelines for manslaughter. In my view, it is very likely that what the Court referred to as "guidelines" was a limited range of manslaughter sentences passed or upheld by this Court in appeals in the preceding (sic) 7 year period. 186. Moreover, the accuracy as a "guideline" of the 18 to 35 year range is questionable inasmuch as no mention is made of sentences passed or upheld in the preceding (sic) 7 years which fell well below the lower end of that range. See for example Christine Johnson Alcock v R Criminal Appeal No. 30 of 2001 and Tenelle Gullivan v R No. 5 of 2005 discussed in Sir 11 Michael's draft, where upheld" in manslaughter appeals decided within the preceding 7 years. 187. Again, apart from identifying the 18 to sentences of 15 and 6 years respectively were "passed or 35 year range, the so called "guideline" judgment in Larry Raymond Jones provides no guidance whatsoever in relation to where along the suggested sentencing continuum certain categories of manslaughter offences might lie. Curiously, manslaughter by negligence which carries a statutory maximum of 5 years is obviously outside the "guideline". **What is more, the so-called "guideline" makes no attempt to differentiate between for example, unintentional homicides, manslaughter by diminished responsibility or by provocation; or the special provisions of section 299 of the Penal Code, Ch. 84 governing the categories of intentional homicides which have been reduced to manslaughter which one might expect to see at the upper end of a properly constructed "guideline".** Having regard to these deficiencies, if guidelines were indeed set in the preceding (sic) 7 years, it is hard to avoid the conclusion that they were not as comprehensive as they should have been and that the 18 to 35 year range is somewhat selectively drawn." 27. At paragraph 75 in Ashley Hield (Supra), I had said, inter alia: "75. There is no gainsaying that Larry Raymond Jones has been a "guide" to the courts - both Supreme Court and this Court - when sentencing in manslaughter cases since 2008. It can no longer be accorded such a status since the decision in Gray." 28. The brief facts in Hield were that the appellant had been charged with the murder of an elderly man but the jury acquitted him of murder and convicted him of manslaughter. The trial judge sentenced the appellant to thirty years' imprisonment notwithstanding that he was sentencing "a twenty-one-year-old man who had no previous convictions, who having lost his self-control, killed a man". **On appeal, the Court found that the trial judge's "ritualistic reliance" on Larry Raymond Jones (Supra) " and his failure to duly observe and sentence in accordance with the verdict of the jury, given the circumstances of the case, strayed beyond the ambit of sentences appropriate for this offence and for this offender; and as a consequence, this Court ought to interfere with it."** 29. Thus, it would appear that the Judge's reliance on Larry Raymond Jones is an error in her sentencing approach; but has she gone totally wrong with the sentence she did in fact impose 12 is the question we must answer. As Cummings, JA said in the Guyanese case of The State v Sydney (2008) 74 WIR 290: "This court has to ask itself what is a proper sentence in all the circumstances of the case. The consideration here must be whether the sentence passed is manifestly excessive or wrong in principle." 30. Barnett, P in Claude Lawson Gray provided a survey of sentences in manslaughter cases that demonstrated a range of sentences that fell below the baseline of eighteen years mentioned in Larry Raymond Jones. The cases ranged from ten years' probation in R v Fanel Joseph Criminal No. 43/2/2012 where the defendant had pleaded guilty to manslaughter to fifteen years' imprisonment in Donnell Rolle v R [2011] 3 BHS J No 25 where the defendant had been charged with the murder of his wife but convicted of manslaughter by the jury. 31. In Hilfrant Francois Joseph v The Attorney General SCCrApp. No. 88 the appellant was sentenced to twenty-five years' imprisonment less the five years and three months he had spent on remand. He had been convicted of murder and sentenced to thirty-five years in his trial; but on appeal the Court, differently constituted, substituted a conviction of manslaughter for the stabbing

death of his girlfriend. 32. The Court, differently constituted, by a majority, in Andy Francis v Regina SCCrApp No. 133 of 2009, substituted a conviction for manslaughter where the appellant had been convicted of murder and sentenced to twenty-five years; but did not interfere with the sentence as they found "the same to be within the mid-range of the sentencing scale for manslaughter and appropriate in all the circumstances". 33. My reference to Francis does not disregard the disagreement by Barnett, P expressed in Ashley Hield (Supra) that that case "should be treated as peculiar to its own facts and not a precedent for a sentence on manslaughter."

[Emphasis mine]

[25.] Nevertheless, the Court recognizes that the Convict plead guilty at the earliest opportunity and cooperated with the investigation. There are no previous convictions. The crime although not as brutal as in other instances is nonetheless brutal in the sense that family members lost a mother, a grandmother and matriarch. Further, the community lost another soul to useless violence. The failure of many young people particularly young men in being able to regulate their emotions continues to create a lot of grief being experienced in our societies.

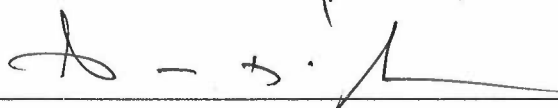
[26.] The proposal offered by Counsel for the Convict doesn't appear, in the opinion of this Court, to be fully appreciative of the circumstances in this case. The cases advanced by the Crown merely cite the years upheld by the Court of Appeal but didn't seek to acknowledge the discussion in many of those cases. The Court notes that the Convict has been on remand for Four (4) years.

DISPOSITION

[27.] The Court hereby convicts Mr. Temar Teandre Forbes of Manslaughter contrary to section 293 of the Penal Code of the Statute Laws of the Bahamas and imposes a fourteen (14) year sentence commencing from 24th June 2020. The Convict has expressed interest in attending electrical and refrigeration classes while at BDOCs if classes are available it is recommended that the Convict is so enrolled. It is perhaps also necessary that the Convict is also enrolled in Anger Management classes if available and substance abuse classes.

[28.] The Convict may appeal the sentence of this Court to the Court of Appeal within the statutory time.

Dated the 18th September, 2024



Andrew Forbes

Justice of the Supreme Court