

COMMONWEALTH OF THE BAHAMAS

CRI/VBI NO.81/11/2009

IN THE SUPREME COURT

Criminal Division

B E T W E E N

DIRECTOR OF PUBLIC PROSECUTIONS

AND

JEROME FRANCOIS

BEFORE: The Honorable Mr. Justice Andrew Forbes

APPEARANCES: Mrs. Ashely Carroll on behalf of the Director of Public
Prosecutions
Mr. Kendal Knowles on behalf of Mr. Jerome Francois

HEARING DATE: 16th January, 2025

SENTENCING DATE: 4th February, 2025

SENTENCING

FORBES, J

BACKGROUND

[1.] On the 23rd April 2006 a witness was making his way when approached by the Convict, who was then fifteen (15) years old, and was informed by the Convict that he had killed someone on the Saturday and buried him on the beach in Hepburn Town. That the witness then escorted the Convict to the Police where the Convict in the presence of the witness and the Local pastor of a Church situated in Eight Mile Rock, Grand Bahama confessed to Sargent 21 Burrows. That the Convict along with the witness, the pastor and the Officer then attended the location identified by the Convict where he pointed to a male body buried.

[2.] According to the confession offered by the Convict, he stated on Saturday the 22nd April, 2006 while at Lover's Beach he saw a Haitian man, the deceased, who was walking and asked him for money. The deceased indicated that he didn't have any money and invited him to go fishing. That while fishing he seized the belongings of the deceased and then the Convict placed a rope around the neck of the deceased and started tightening it as the man attempted to fight back. That the Convict then retrieved his knife and stabbed the deceased multiple times about the body. He then dragged the deceased over to an area near some trees and covered him with leaves. The Convict was sub sequentially charged and arraigned for murder contrary to section 291(1) (b) of the Penal Code and remanded to the Bahamas Department of Correctional Services on the 28th April 2006, released on the 28th January 2008 and readmitted on the 5th May 2008. The Convict was then arraigned before then Senior Justice (as he then was) Hartman Longley where he pleaded guilty to the Charge of Manslaughter by Reason of Provocation. On the 12th November 2010 the Convict was then sentenced to life imprisonment.

[3.] The Convict Appealed his sentence to the Court of Appeal, where on the 22nd July 2020 oral arguments were heard and the Court of Appeal in the decision authored by Justice of Appeal Crane-Scott quashed the sentence and directed that the Convict to be resentenced by the Supreme Court. The Court of Appeal noted in the headnotes said the following:

"The authorities clearly establish that a life sentence is inappropriate where the index offence is not grave enough to require a very long sentence. However, where a judge is

satisfied that the offence is so grave that a very long sentence is warranted, the judge must then proceed to consider any evidence of the appellant's likelihood of further offending and the gravity of such further offending in order to discover whether there are good grounds for believing that the defendant may remain a serious danger to the public for a period which cannot be reliably estimated at the date of sentence. In the absence of evidence as to the appellant's likelihood of further offending, the judge's decision to impose the life sentence was clearly wrong...."

In that regard this Court directed a more current Probation Report be prepared as well as a more current Psychiatric Report to assist the Court. This Court then called those witnesses to provide evidence on possible substantial questions, necessary to assist this Court in arriving at the appropriate sentence.

[4.] The Convict was represented by Counsel Mr. Kendal Knowles and the Crown was represented by Mrs. Ashley Carroll. They both laid over arguments which this Court will refer. A more current 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 11th September 2024.

[5.] The report sourced information from the Convict Jerome Francois, Corrections Officer Jamaro Sturup and Chief Probation Officer of the Department of Rehabilitative Welfare Services – Deborah Duncombe who 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.

[6.] The Court also received a Psychiatric Report dated 29th October 2024 authored by Doctor John Dillett and signed on his behalf by Doctor Petra Forbes. This Court is aware and takes judicial notice of a previous Probation Report dated 15th October 2010 as well as a Psychiatric Report dated 28th July 2010 prepared by Doctor Kirk Christie. Along with a Criminal Record dated 12th October 2010 as well as a Criminal Record affixed to the 2024 Probation Report dated 4th July 2024. This Court notes that at the time of the Convict's sentencing in 2010, according to the Bahamas Prison Services, in a Letter to the Director of Public Prosecution c/o Ms. Erica Kemp and dated 8th November 2019 which the Prosecutor alerted the court the Convict at that time had been in custody Four (4) years Nine (9) months and three (3) days on Remand.

[7.] Counsel for the DPP made recommendations as to an appropriate sentence and Counsel for Mr. Kendal Knowles made pleas in mitigation.

FACTS

[8.] The brief facts are extracted from the Appeals record found at paragraph 10 of the Decision of the Court of Appeal in **Jerome Daniel Francois and Regina** SCCrApp. No. 165 of 2010 those facts are as follows:

“On Saturday, 22nd April, 2006, while walking in (sic) area of Lover’s Beach in Hepburn Town, Eight Mile Rock, Mr. Jerome Daniel Francois met the deceased, Manes Saint-Ilien a.k.a John. Mr. Saint Ilien had in his hand a bucket and fishing paraphernalia as he was about to go fishing. Mr. Francois approached Mr. Saint-Ilien and Mr. Saint-Ilien invited him to fish along with him. After the fishing expedition, which was alongside the beach, Mr. Saint-Ilien caught two fish, and according to Mr. Francois he would have caught three fishes. As Mr. Francois and Mr. Saint-Ilien was (sic) about to leave the beach, Mr. Francois asked Mr. Saint-Ilien for his catch, the two fish. Mr. Saint-Ilien did not give him the fish and Mr. Francois pulled the bucket away from Mr. Saint-Ilien and an altercation started. Mr. Saint-Ilien would have kicked him and punched him. Mr. Francois then choked the deceased, Mr. Saint-Ilien with a cord. He then dragged him. He stomped upon him and he threw rocks on Mr. Saint-Ilien. Mr. Saint Ilien was unresponsive and Mr. Francois then took him to an area where he dug a shallow grave and piled leaves and trash on Mr. Saint-Ilien. Mr. Francois then returned to his home that evening... On the 23rd, my Lord, which was a Sunday, Mr. Jerome Francois would have confessed to Mr. Peter Greene, who is a member of the End Times Ministry church in Hanna Hill and told him that he had killed a man and that he couldn’t sleep at all last night and he wanted to get this off his chest. He would have given details of the killing to Mr. Peter Greene and Mr. Peter Greene sought the assistance of Pastor Roderick Greene of End Times Ministry. Mr. Francois then repeated his confession to Mr. Roderick Greene, the pastor, and then both Mr. Roderick Greene and Mr. Peter Greene proceeded to take Mr. Francois, upon Mr. Francois’ request, to the Eight Mile Rock Police Station. He was cautioned and arrested by PC 1853 Allen. A few minutes later in the company of Pastor Greene and Peter Greene and the police, Mr. Francois would have taken those persons to the site where he would have buried the deceased, Mr. Saint-Ilien. The body was removed and brought to the Rand Memorial Hospital where he was pronounced dead. An autopsy was performed on 25th April by Dr. Anna Tankawan. The autopsy findings were that the deceased suffered abrasions about the face, trunk and extremities; multiple lacerations to the nose and lips; fracture of the right and left clavicle or collar bone; multiple rib fractures, contusions on the right and left diaphragms; lacerations to the left/right lungs; transverse laceration of the heart, which was the fatal injury. The fracture from the rib would have lacerated or cut into the heart causing extensive bleeding in the chest cavity. There was also fracture of the fifth thoracic vertebrae. The deceased would have died from the fractures, but the fatal wound would have been the laceration to the heart. There were more than 2000 milliliters of blood found in the chest cavity. 5 And the cause of death would have been exsanguination

secondary to transverse laceration of the heart and multiple laceration of both lungs. My Lord, the investigation would have proceeded by the police. And at the time of the arrest, my Lord, the defendant was a juvenile, age 15 years old. During the taking of a confession, he was in the presence of Kaylisa Gibbs, who is a probation officer, and also his mother...the defendant's mother. Ms. Kaylisa Gibbs' observation at the time of the taking of the confession was that she noted that the accused laughed a lot... ”

[9.] According to the information in the Probation Report, the Convict was born in Freeport, Grand Bahama on the 27th June 1990 to Ms. MaryAnn Francois. His biological mother was only thirteen (13) at the time and he is unaware as to who his biological father is. The Convict is the oldest of his mother's five (5) children. The Convict commenced his education at Bartlett Hill Primary School where he completed grades one (1) through five (5) although he repeated grade two (2). It is here where the Convict commenced displaying behavioral problems and he was referred to the Psychological Services Unit at the Ministry of Education at age nine (9). He was then placed at the Beacon School where he completed the sixth (6) grade. He then transferred to St. George's High School but shortly thereafter discontinued his education. According to the convict he worked odd jobs to earn money. The Convict has been incarcerated since the age of fifteen (15). He has never been employed, 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 music.

[10.] The Convict's previous Probation Report dated 15th October 2010 noted that the mother of the Convict, Ms. MaryAnn Francois, described their relationship as a tumultuous one and that at times he could become aggressive and break things when she attempted to discipline him. Also, she noted that her son was disrespectful towards her paramour. In the report prepared for the Court of Appeal dated 5th May 2020, Ms. Francois indicated that if released she would be unable to accommodate him as she resides in a one-bedroom apartment with a friend. She indicated she was unable to visit the Convict while he was incarcerated due to financial constraints. In the same report the Convict's brother Mr. Shane Francois indicated he was willing to accommodate him and assist with his reintegration into society. He also indicated that that Convict had confided in him of his propensity to kill cats and dogs in the neighborhood. He further reported that their mother was not nurturing and neglected them and as a consequence they were raised by their maternal aunt. At the hearing, the Court inquired whether the Convict's brother was contacted, Mr. Boyd stated that he was unable to get in contact with him.

[11.] The Court notes that the Probation Report noted the comments of Senior Corrections Officer Mr. Roderick Grant who stated that the Convict ought not to be incarcerated in the correction facility but rather in a psychiatric facility. It is noted that the Convict is not involved in any Rehabilitative Programs due to his erratic behavior due to concerns that he might attempt to escape. Also, Corrections Officer Mr. Zhavonne Mackey indicates that the Convict is seen by the Psychiatric Team twice per month and is on prescribed medication. It is reported that at times he refused to take the medication and became belligerent; however, he is not aggressive towards the Corrections Officers.

[12.] According to Doctor Kirk Christie a Psychiatrist who authored a report 18th July 2010, the convict psychiatric disorder was in remission and there were no signs of psychosis, mania, or depression. The report of Doctor John Dillet dated 6th June 2019 indicated that the convict met the criteria for schizoaffective disorder and that his present status was stable. He was being managed with antipsychotic medications. The report executed by Doctor Petra Forbes on behalf of Doctor Dillet and dated 29th October 2024, noted that Mr. Francois was diagnosed with a mild intellectual impairment with a history of conduct disorder. Quoting from the report it states:

“He does not understand the nature of the charges and cannot differentiate between murder and manslaughter versus self-defence. Additionally, he does not fully understand the court process nor how to instruct his lawyer. He understands the difference between innocence and guilt and some consequences of guilt... Mr. Francois intellectual impair limits his ability to fully understand social cues and comprehension. He is at relatively low risk to reoffend, and he is at low risk to become an endangerment to society based on his stability over the last fourteen years (14), his compliance with medication, his lack of access of psychoactive materials (e.g. illicit drugs). However, it is possible if his condition destabilizes, and should he become non-adherent with treatment and not monitored appropriately as an outpatient then his risk could increase.”

[13.] At the hearing, the Court sought clarification of the seemingly differing diagnoses of the Convict. Dr. Dillard explained that though Dr. Christie, Dr. Fernander and Dr. Knowles all have differing diagnoses experience and expertise may be the cause. That having reviewed the reports it is his medical opinion that the Convict has a schizoaffective disorder and that once he is properly medicated and he remains in a structured environment his risk of recidivism is moderate to low.

[14.] According, to Health Social Worker Mr. Clarence Hield the convict was referred to the Rand Memorial Hospital Psychiatric Unit several times for assessment and prior to 2003 was admitted to the Unit several times. The Chief Probation Officer Mrs. Duncombe visited with the Convict on the 29th July 2024 where he explained that the deceased had allegedly assaulted him

and that he acted in self-defence. He further indicated he wants to return to school, secure employment and find a girlfriend. He indicated he learned to write and read and smoke cigarettes. He attends Bible classes with Prison Chaplin and prefers being called Daniel as opposed to Jerome as he has been inspired by Daniel in the bible. The Convict further indicated that a current inmate was willing to accommodate him if he is released and remains in New Providence. It would be noted that this account differs from a previous account where the Convict indicated that he sought to obtain fish from the victim but was denied and a physical altercation ensued, he then took a knife and stabbed the victim and then tied a rope around his neck before hitting him with a rock before burying him. Also a Corrections Officer Mr. Jamaro Sturrup reports that for the last two (2) years the Convict hasn't been interfering with anyone. Acknowledging that the Convict has had episodes but there hasn't been any which has occurred recently. However, whenever there was an episode he was seen by a doctor. The Officer, however, was not aware of the Convict taking any medication other than for pain and headaches.

[15.] The recommendation authored by Mr. Laish Boyd Jr. & Ms. Wynelle Goodridge suggested that and I quote:

“the convict has been incarcerated in a structured environment, where his behavior has been closely monitored for many years. Although it may be beneficial for him to be released into society, it will also be challenging for him to function as he would not have the structure, mental, emotional or psychological support which is necessary for successful reintegration into society.”

LAW

[16.] 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....”

[17.] 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...

[18.] 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.

[19.] 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 as 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

[20.] Mr. Kendal Knowles 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 and suffers from a mental defect further that the convict has spent some fifteen (15) years behind bars.

[21.] 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 there were no antecedents.

The Crown relied upon the cases of **Larry Raymond Jones v. The Attorney General et. al. SCCrApp. Nos. 12, 18 and 19 of 2007** in which the Crown cited the comments of Madam Justice Dame Sawyer President of the Court of Appeal (as she then was), where the Court noted at paragraph 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. Sentence passed or upheld by this court during that period range from 18 years to 35 years imprisonment...”* **Raphael Neymour v. The Attorney General** SCCrApp. No. 172 of 2010 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. Finally, the case of **Christopher Joseph McQueen v The Director of Public Prosecutions** SCCrApp. & CAIS No. 18 of 2021 was offered, again a similar offence of Manslaughter where the Defendant was convicted and sentenced to Thirty years (30) however, on appeal the sentence was reduced to twenty years (20) and further reduce by Thirty Eight months (38) for time spent on remand for a total time of seventeen years (17).

[22.] The Crown sought to rely upon the case of **Ashley Hield v. Regina SCCrApp. No. 172 of 2019**, where the defendant was convicted of manslaughter and was sentenced to thirty years (30) on Appeal the sentence was reduced to twenty years (20). At the closure of its submissions the Crown recommended that the Convict should serve twenty (20) years at BDOCS. However, they further recommend a reduction of sixteen years and eight months from May 5th 2008 to January 16th 2025 and further recommended to take the time on remand into account with annual psychiatric assessments and continued medical treatment.

ANYALSIS & DISCUSSION

[23.] In individualizing this case to the present convict, Mr. Jerome Daniel Francois aka Daniel Francois as he now wishes to be known as, 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.

[24.] 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.

[25.] 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]

[26.] 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 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]

[27.] 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 father, a grandfather and patriarch. 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. The Court also recognizes the substantial challenges that exist in this case as the psychiatrist reports and the evidence of Dr. Dillet the Convict has a schizoaffective disorder which is a diagnosis that cannot be removed. That he requires medication, structure and assistance. However, there is a caveat as large as the chasm of the Grand Canyon which is wholly dependent upon his compliance with medical protocols and

should he become non-adherent or monitored, his risk increases. The more current report fails to mention the nature and consistency required of these medical interventions.

[28.] The Court then have conflicting statements made by various Correction Officers suggesting that he is given medication and is sometimes belligerent to statements of only pain medications are observed being provided. To comments made by a brother of providing care although there was no follow-up to ascertain what were the circumstances of this brother and could he reasonably be expected to take care of the convict and what would that look like and what are his resources and where does he reside, none of those questions are available. To comments made by the convict himself as potentially living with another incarcerated person if he is released. Again no follow-up as to who this individual might be and whether they are suitable, more importantly is this even advisable given the tenuous mental character of the convict. At the end of the day the Court is left with limited options.

[29.] Where a person suffers greatly from a mental illness and is convicted section 192 of the Criminal Procedure Code applies which provides: "(1) Where any person is found to be insane...the court shall order him to be conveyed to any hospital or other place for the time being appointed under any law to be a public lunatic asylum or for the reception of criminal lunatics, there to be kept until discharged by order of the Governor-General."

[30.] The Court of Appeal in the case of **Eric Stubbs v Regina** SCCrApp No. 35 of 2021 has determined that this section is unconstitutional citing the case of **DPP of Jamaica v Mollison** [2003] UKPC 6. Though the case of **Mollison supra** concerned the examination of section 29 of the Juveniles Act, the sentiment that sentencing is strictly a judicial exercise and to put this power in the hands of the executive breaches the separation of powers as provided for by the constitution is quite clear. As Lord Bingham held:

A person detained during the Governor-General's pleasure is deprived of his personal liberty not in execution of the sentence or order of a court but at the discretion of the executive. Such a person is not afforded a fair hearing by an independent and impartial court, because the sentencing of a criminal defendant is part of the hearing and in cases such as the present sentence is effectively passed by the executive and not by a court independent of the executive.

[31.] Therefore, as it stands the Court is simply unable to sentence an individual with violent outbursts, a moderate to low risk of reoffending, no external support and a history of mental illness to a facility that can ensure that he gets the adequate care that he needs. The offending section is unconstitutional and cannot be adhered to. Truthfully, the Criminal Procedure Code requires many amendments when concerning persons with mental health problems to be effective and or match the standard as set by the Privy Council.

[32.] Therefore, the Court is responsible for the sobering task of providing a definite sentence for the Convict all the while balancing his constitutional rights and the rights of the public. There are no external mental health facility properly suited to accommodate the convict to allow for a structure and proper care. This conundrum leaves the Court with either continued incarceration or releasing the convict, who in the view of this court is ill prepared to be released on an unsuspecting public. The revelations of the convict previously killing animals demonstrate psychotic behavior. The psychiatric reports are limited at best and offer very little if the Court were to be honest in their assessment. It appears that decision as to what happens with Mr. François is entirely a judicial one.

[33.] 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 served a sentence thus far of fourteen years (14). According to a letter dated 19th December 2024 authored by Chief Corrections Officer Ms. Claudia Frazier, the Convict was remanded for murder on 26th April 2006, released on the 28th January 2008, readmitted on the 23rd April 2008. Convicted of manslaughter on 12th November 2010 where he was sentenced to life imprisonment. On the 8th December 2020 the Court Appeal overturned the sentenced and order the Convict to be resented.


DISPOSITION

[34.] The Court hereby Convicts Mr. Jerome Daniel Francois aka Daniel Francois of Manslaughter contrary to section 293 of the Penal Code of the Statute Laws of the Bahamas and imposes an additional five (5) year sentence commencing from 8th December, 2020. Further, the Court imposes a 3-year probationary period upon his release with mandated monthly visits to either Sandilands Rehabilitation Center or the Rand Memorial Psychiatric Unit, in default of which the

Convict is to serve a further year in prison. It is perhaps also necessary that the Convict is also enrolled in Anger Management classes if available and substance abuse classes and continue with his psychological treatment.

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

Dated the 4th February, 2025

A handwritten signature in black ink, appearing to read 'A. Forbes', written over a horizontal line.

Andrew Forbes
Justice of the Supreme Court