

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

(CRIMINAL DIVISION)

Information no. 204/9/2018B

BETWEEN

DIRECTOR OF PUBLIC PROSECUTIONS

AND

KYLE HEPBURN

Before: The Hon. Mr. Justice Franklyn K M Williams MB KC

Appearances: Mr. Brent McNeil for the Director of Public Prosecutions

Mr. Philip Hilton for the convict

Hearing date: 1 July 2025

Sentencing date: 20 October 2025

JUDGEMENT ON SENTENCING

[Criminal Law – Murder – Denial – Rejection of defence – Conviction – Sentencing guidelines]

Williams J

[1.] On 20 March 2025 Kyle Hepburn (“the convict”) was found guilty by jury of the murder and attempted armed robbery of Mr. Wilton Brown.

Facts

[2.] The facts are helpfully distilled in the submissions of the Director of Public Prosecutions. I would point out that the convict was identified by Akeem Brown, son of the slain Wilton Brown. Akeem Brown keenly observed the convict approach his father. He gave those observations to the police forensic sketch artist, who produced rendering by which the convict was identified. Akeem Brown, on several occasions following identified the convict as the man who approached his father in an attempt to rob him.

The legislative framework

[3.] Section 291 (1) (b) of the Penal Code (Amendment) Act 2011 states:

“Notwithstanding any other law to the contrary –

(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...

See AG v Larry Raymond Jones et als (SCCrApp No.s 12, 13 and 14 of 2007)

and

Section 339 (2) of the Penal Code:

“Whoever commits robbery, being armed with any offensive instrument, or having made any preparation for using force or causing harm, shall be liable to imprisonment within the range of fifteen to twenty five years:

Provided that whoever commits robbery, being armed with any offensive instrument shall, where the offensive instrument is a firearm, be liable to imprisonment for life.”

Section 83 (2) of the Penal Code:

“Whoever attempts to commit an offence shall, if the attempt is frustrated by reason only of accident or of circumstances or events independent of his will, be deemed guilty of an attempt in the first degree, and shall, except as in this Code otherwise expressly provided, be punishable in the same manner as if the offence had been completed.”

[4.] In *Devaughn Hall v Regina* SCCrApp No. 226 of 2018, the Court of Appeal affirmed a sentence of sixty years for murder and twenty five years for armed robbery in which the appellant and others having lain in wait, accosted the deceased husband and wife, and before fleeing in the deceased truck, executed them by shooting them at point blank range in the head.

[5.] In *James Miller v Regina* SCCrApp No. 106 of 2009 the Court of Appeal, the appellant was convicted of the offences of attempted murder and armed robbery, inter alia. Sentenced to life imprisonment on the former, the Court substituted a sentence of forty years, while it affirmed the sentence of twenty five years for the latter; in so holding, the Court stated:

“It is trite that the sentence for an attempt is the same as that for the substantive offence.” Allen,P

[4.] The Director of Public Prosecutions seeks a sentence of between 30 – 45 years on the conviction for murder, and a sentence of between 15 – 20 years on the conviction for attempted armed robbery.

[5.] In sentencing the convict, I take into consideration the five objects of punishment:

- a) **Retribution** the punishment is to reflect the denouncement by society and the legislature of the offender and the offence.
- b) **Deterrence (general)** the offender must be punished appropriately to deter those who consider engaging in the same conduct
- c) **Deterrence (specific)** to ensure that this offender is deterred from future criminal conduct
- d) **Preventive** to prevent this particular offender from continuing

predation

e) **Rehabilitation** to cause the offender to reform to become a contributing member of society

[5.] Per the Probation Report, the convict describes himself as “a kindhearted, compassionate, hardworking, independent person and a go getter.”

[6.] The convict’s father acknowledged the possibility of his involvement in these offences, “...he “wants to please friends”, and the father “...noticed, while working at Junkanoo Beach in his capacity as a Police Reservist, that he (the convict) “only had two (2) fellas around him.”

“Reportedly, he cautioned his son about them often, but he usually dismissed his concerns. Mr Hepburn (the father) alleged that his son’s present predicament is due to those “two fellas.”

The convict states that he is innocent and is befuddled as to how he was convicted of these offences, when as he says, he “was not there.” He believes that his innocence is manifested by reason only that his crime was not caught on cctv; as he put it, “there is no evidence on camera that he was present at the scene of the crime.”

Of Wilton Brown’s family, it is reported:

“Mrs. Portia Brown, the Victim’s wife, stated that her children, who were aged seven (7), eleven (11), sixteen (16), twenty five (25) and twenty nine (29) years at the time, are still affected by their father’s untimely death. She described him as a very nice person, a good father and the supplier of the family’s livelihood. She informed that he “never bothered with anybody”. Mrs Brown revealed that she is “still trying to catch myself and it is not easy”, because they were very close, having

been married for twenty five years. ...the Victim's widow, is requesting that the Court be fair in "doing the right thing".

[7.] Other than these above references, I do not consider the Probation Report to be helpful.

Considerations on sentencing

[8.] Adderley JA in *Prince Hepburn v Regina* SCCrApp No.79 of 2013 set out the considerations on sentencing:

"In exercising his sentencing function judicially the sentencing judge must individualize the crime to the particular perpetrator and the particular victim so that he can, in accordance with his legal mandate, identify and take into consideration the aggravating as well as the mitigating factors applicable to the particular perpetrator in the particular case. This includes but is 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 or not he pleaded guilty at the first opportunity, whether he had 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."

[9.] The Director of Public Prosecutions has identified both aggravating and mitigating factor. Of the former which I accept are:

- a) the seriousness of the offence
- b) the deceased was murdered whilst the convict attempted to rob him
- c) the murder was effected by the use of firearm, clearly employed to enforce the convicts will, i.e. the robbery of the deceased
- d) the deceased was a husband, a father to minor children, one of which saw the assault resulting in his decease. The deceased was the breadwinner of his family. The trauma of his loss remains.

Of the latter, which I accept, the convict has no previous convictions.

Clearly, the aggravating factors outweigh the mitigating factor.

[10.] On this issue of deterrence, particular to this case, I am of the view that specific deterrence is unnecessary. General deterrence is required in order that others like the defendant be deterred:

[11.]Of general deterrence, the Barbados Court of Appeal in *Romain Bend and Rodney Murray v The Queen* (per Simmons CJ), *apropos* of both the facts and personal circumstances of the convict here, had this to say :

“...Civil society must be protected and sentences by way of general deterrence must be used in appropriate cases to mark down our disapproval of behavior such as was witnessed in this case. Courts must do all in their power to deter such behavior. And we should also observe the fact that Murray had no previous criminal record does not avail

him when the court is dealing with a case of this gravity...”

[12.] The court takes notice of the upsurge of violent crimes involving the use of firearms generally, and specifically of armed robberies involving the use of firearms. The court must show its abhorrence by handing down appropriate sentences.

[13.] Again, the court and society must show its abhorrence of both the armed robbery, and the murder of Wilton Brown upon the failure of the former, applying the principle of retribution.

[14.] While due consideration of rehabilitation is given in the imposition of sentence here, I have no confidence that the convict is a suitable candidate, given his belief that his innocence is “proved” only “because there is no evidence on camera that he was present at the scene of the crime.”

[15.] Wilton Brown, an innocent man, was cold bloodedly murdered when he dared to resist being robbed. The facts show that some degree of planning and premeditation was involved. The murdered man was a taxi driver, who, it seems, was targeted for that very fact, and followed [to his home].

[16.] I specifically consider that the convict has no prior criminal record. In my view however, I consider it dastardly both that a man should be robbed of his earnings, and killed for having resisted being robbed. The deceased resisted in words, “ I don’t have any money.”

[17.] Having heard the submissions of the Director of Public Prosecutions and that of the respondent convict, and considering the particular circumstances of this case, and considering the principles of sentencing and guidelines from Bahamian and Caribbean authorities, a term of imprisonment of twenty (20) years for the attempted armed robbery is appropriate, a term of forty five (45) years for the murder of Wilton Brown is appropriate. The convict is so sentenced.

FKM Williams
Williams J

6 October 2025