

**COMMONWEALTH OF THE BAHAMAS
CRI/VBI/36/2/2022**

IN THE SUPREME COURT

Criminal Division

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS

AND

KENNETH HANNA

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

**Appearances: Mrs. Tabitha Frazier of Counsel for the Crown
Ms. Tamika Roberts of Counsel for the Convict**

Hearing Dates: 29 December 2025; 3 January 2026; 10 March 2026

SENTENCING JUDGMENT

Williams, J

1. On 27th October, 2025, the accused (hereinafter “the Convict”) was convicted on his guilty plea of Manslaughter contrary to section 293 of the Penal Code, Chapter 84 of The Statute laws of the Commonwealth of the Bahamas
2. The facts are helpfully distilled from the submissions of the Director of Public Prosecutions, the Record of Interview of the convict which he voluntarily sat for, and in which he made certain admissions and the viva voce evidence of Kristan Bastian and Jakayo Kemp, witnesses called by the Director of Public Prosecutions. The convict, a child of seventeen years at the time, was accompanied by his father, Kevin Hanna Sr.
3. On Saturday 18 December 2021, both deceased and the convict attended the Fish Fry at Arawak Key. The convict was accompanied by his friend Denari. According to a witness, the deceased “dapped” the convict. The daps was not mutual and given what followed, the dap by the deceased was not necessarily

friendly. The convict certainly did not think so. Of this dap, "Yeah, ...I ain't into a this slapping up you'll is jokers." The convict said. The deceased appeared to be attempting to provoke the convict. Kristan Bastian, prosecution witness confirms this when he says "...but big boy was laughing..."

4. At the time of the dap, the deceased and the convict were separated by barricade. At some point, the deceased kicked over the convict's "Loko" drink. The convict, urged by a female, left the presence of the deceased. The evidence of Jakayo Kemp:

"Q. And where you said that the daps happened it was you, Kristan and Ashton?

A. Yes, ma'am

Q. And then y'all remained where y'all were, correct?

A. Right

Q. And the person who received the daps was not with you anymore, correct?

A. Right.

Q. That person left your company, left your area, correct?

A. Right

5. What is clear is that after the convict had left the area, the deceased having had to have gone over the barricade to do so, was engaged in a fight with first the convict's friend Denari, and consequent his attempts to part that fight, the convict; the clear inference being that the deceased was the aggressor. The evidence of Jakayo Kemp:

Q. At any point when you see Kristan did he go over the barricade?

A. Kristan

Q. Not Kristan sorry Ashton

A. When I turned my back around he was already across the barricade.

6. Kristan Bastian, perhaps unwittingly provides some corroboration both of the convict's claim that he was set upon by a number of persons and that he (Bastian) was one of those doing so.

"Q. Now do you recall how many persons were in this fight?

A. No, it was crowded

Q. When you say crowded you mean like a number of persons?

A. Number of persons.

Q. Plenty people

A.Plenty people.”

Q. So it is safe to say that at some point, meaning in the initial phases in the In the beginning you were involved in pushing Kenneth?

A. Yes.

B.

Principles of Sentencing

7. The five objects comprising the aims of sentencing are:

Retribution. The punishment reflects the disapproval of the society and the legislature of the offender and the offence.

Deterrence. The punishment appropriate to deter likeminded offenders, and the particular offender from future criminal conduct.

Prevention. For the protection of the public and incarceration of the offender

Rehabilitation. The reform of the offender, necessary for and preparatory to the societal re entry of the offender

Restitution. The physical and financial restoration of those affected by offender’s conduct

Sentencing considerations

8. Adderley JA in *Prince Hepburn v Regina* SCCrApp No.79 of 2013 laid down the judicial considerations in 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 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. Each case is considered on its own facts.”.

Probation Report

9. The convict is the second of four children who resides with his mother in a five room single dwelling stone structure furnished with the adequate necessities and utilities and situated within a community predominantly comprised of working-class Haitian families. It is generally regarded as safe and stable.
10. The convict received his early education at the Claridge Primary School, T.G. Glover Primary School, T.A. Thompson Junior High School and the Alternative Learning Institute where he successfully obtained six (6) Bahamas Junior Certificate (BJC). Upon completion of High School, the Convict joined the work force.
11. The convict began working in the construction trade alongside his father where he became the proficient in carpentry and this became his full-time job. During these years he also learned “steel work” earning a daily salary of between one hundred twenty dollars (\$120) and one hundred thirty dollars (\$130) daily.
12. He is unmarried and has not fathered any children as of date. However, he maintains a romantic relationship with a female since 2023, who is presently pregnant. He is said to be anticipating fatherhood. The convict has no criminal history and a bail violation, which he was fined one thousand dollars. He explained that his mother became ill and he had to take her to the hospital.
13. The convict’s mother, Ms Kentraell Mackey describes her son as a “leader, determined, intelligent, skillful, focused, loving and helpful with paying household expenses.” She expressed her shock and became emotional upon hearing of her son’s involvement in the current offence, and believes that his actions were not intentional but also stated that “he cannot run from what he did, the offence is not the worst of the worst” and hopes that the Court is fair in sentencing. She also expresses her sorrow at the deceased loss of life.
14. Mr. Kevin Hanna Sr, the convict’s father described their relationship as affable. That the convict is a skilled and passionate worker, who is kind, considerate and “a good kid overall.” He stated that upon learning of his son’s involvement in the present offence, he was puzzled as he has never displayed any form of physical aggression. However he is saddened by the loss of the deceased’s life.

15. Dr. Deborah Campbell, Principal at Alternative Learning Institute, stated that the convict “was never a behavioral concern, showed empathy to others and was often the first to offer help”. She further added that “he was loved by both his peers and younger students, many of whom looked up to him.” She believes that the offence was both “tragic and unplanned and a grievous mistake made during a moment of confusion and fear among youths.” She sincerely requests the court’s leniency.
16. Mr. Ernest Burrows, a family friend who has known the convict for more than ten (10) years expressed his “deep disturbance” when informed of the present offence committed. He believes that the convict has made a serious mistake and “understands accountability and punishment to be a part of the process” but he sincerely requests that leniency be considered.
17. Ms Lasheen Barr, the deceased mother described her son as a loving, helpful, kind person who was an athlete in school among other things. She believed that the convict is a member of a gang and killed her son out of jealousy. She explained that her son was in a romantic relationship with the convict’s ex girlfriend and he saw her kissing him on the cheek and decided to fight him. She is extremely angry as she continues to deeply grieve the loss of her son and as a result has lost weight. She expressed that she does not want the Court to have mercy when sentencing the convict.
18. The Convict has voiced his remorse for his actions. He stated that he was trying to get away from the beating and stated “if he could turn back time, I would” and pleads for the deceased family’s forgiveness.
19. Lastly, The Probation Officer, Ms. Tabitha Hanna stated in her report that although the convict was reared in a single parent home, his father played a prominent role in his upbringing, The convict friends, family members and those close to him all describe him in favorable terms. They believe that he did not intentionally take the life of the deceased. She noted, among other things that the convict appears to have genuine remorse for his actions and that all of the aforementioned be taken into consideration

Submissions of the convict and plea in mitigation

20. Counsel for the convict submits that there are five (5) mitigating factors in favor of the convict:

- i. The Convict's youthfulness. He was a minor at the time the offence was committed (17 years old) and is presently twenty-one (21) years of age.
- ii. The Convict has no prior convictions
- iii. The Convict pleaded guilty at the earliest opportunity
- iv. The Convict is remorseful
- v. The Convict has accepted responsibility, and demonstrates genuine prospects for rehabilitation

21. Counsel for the convict relies on a number of authorities, which the Court has considered including *Leroy Rolle v Attorney General* SCCrApp No. 40 of 2014; *Kenneth Samuel v The Queen* (Eastern Caribbean Court of Appeal, St. Vincent and the Grenadines); *R v Chisnell Desir* (Criminal Case No. 688 of 2009); *R v Fanel Joseph* (Criminal Case No. 43/2/2012), the latter two considered in *AG v Claude Lawson Gray* SCCrApp No. 115 of 2018 also relied on by the convict and which the Court also considered.

22. Counsel submits that the only aggravating factor against the convict is the seriousness of the offence.

Submissions of the Director of Public Prosecutions

23. Counsel for the Director of Public Prosecution submits that the aggravating factors are:

- i. There was a breach of trust - The convict was known to the deceased
- ii. The nature and seriousness of the offence
- iii. An offensive instrument was used, namely a knife
- iv. The Convict did not plead guilty at the an early stage and made the deceased family relive the offence
- v. The prevalence of this type of offence.

24. The mitigating factors submitted are that

- i. The Convict pleaded guilty
- ii. The Convict is a young person
- iii. The Convict has no prior convictions

25. Counsel for the Crown relied upon a number of authorities, namely *Marvin Edgcombe v Director of Public Prosecutions* SCCrApp No. 145 of 2021, *R v McPhee* [2012] 1 BHS J. No. 99 and *Zaria Burrows and Dervinique*

Edwards v DPP CRI/VBI/68/3 of 2018 and *AG v Claude Lawson Gray* (supra) among others, all of which were duly considered by this Court, reflecting custodial sentences ranging from five to twenty-five years' imprisonment.

26. Notwithstanding that these cases all concerned the offence of manslaughter, those authorities are distinguishable on their facts, in that each concerned offenders who were adults at the time of the commission of the offences for which they were convicted. The Court is therefore mindful that the present matter concerns a youthful offender, whose age at the time of the offence remains, in my view, a material sentencing consideration in the particular circumstances of this case, as is his now relative youthfulness.

The Law

27. Section 293 of the Penal Code, Chapter 84

“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”

Appropriate sentence and disposition

28. Here I remind myself of the principles of sentencing namely as referenced in the laid down by Wooding CJ in *Benjamin*
29. Which of these factors predominate depends on the particular circumstances of the case.
30. At the outset, I find that there is no evidence of any gang involvement of the convict, or of the existence of any relationship between the deceased and an ex girlfriend of the convict, of which there was jealousy.
31. The Director of Public Prosecutions submits as aggravating that the convict and Ashton Mcphee were known to each other, and as such the death of the former was a breach of trust. On the evidence of both the convict and the prosecution witnesses, they were not known to each other. Those witnesses say that Ashton

asked that Kenneth Hanna be pointed out to him. Hanna says that he had not known the deceased prior to that day; he had only known of him.

32. Here, I remind myself of the judicial considerations on sentencing as laid by Adderley JA in *Hepburn* (supra). There is no evidence to suggest aggression on the part of the convict, or that he initiated the affray which resulted in the death of Ashton Mcphee. His statement of having intervened to break up fight between his friend and the deceased is corroborated, in part by the evidence of the prosecution witnesses Bastian and Kemp.
33. As the convict's claim of self defence is uncontroverted, either on the evidence of Kristan Bastian or Jakayo Kemp, I find that the only aggravating factor to be the use of the knife in the commission of a serious offence. I do not consider the breach of a bail condition in the particular circumstances as described, as aggravating. Conversely, I find as mitigating, the lack of priors, the convict's youthfulness at the time of the commission of the offence and his now relative youthfulness, his gainful employment, the convict's acceptance of responsibility and evident remorse, and his early plea to the charge of manslaughter. I also consider to redound to his favour, his efforts in the rescue of the Braithwaite family from a burning building at East Street, New Providence whilst on bail pending sentencing. In my view, he is not a danger or threat to the public, and not likely to again find himself in a similar position.
34. While deterrence and punishment remain relevant considerations, I am of the view, here, that rehabilitation is the greater.
35. The convict's general conduct before charge, and his general and specific conduct whilst on bail pending sentence, by any measure augurs well for his rehabilitation.
36. I am mindful that the life of Ashton Mcphee, himself a young person of seventeen years was tragically taken. I am mindful of the prevalence of homicide amongst those fifteen to thirty years. I am also mindful that the facts, as related by the Crown, and founded on the evidence of Kemp and Bastian do not advert of deliberation and or premeditation on the part of the convict.

37. The Crown submits that a sentence in the range of fifteen to thirty five years is appropriate. I am of the view that the Crown having considered its position before its proffer of manslaughter, must necessarily concede that any sentence would be on the low end. Counsel for the convict submits a six year sentence is appropriate. No guidelines existing in this jurisdiction at the time of conviction, I now consider the authorities, both in the region and elsewhere, in particular those of similar factual circumstance.

38. In Jamaica, the range starts as low as five years; in the Bahamas, probation has been granted. In *R v Pierre Lorde* (2006) 73 WIR 28, the Barbados Court of Appeal gave guidelines:

“4. In a contested trial where no intrinsically dangerous weapon was used and there are mitigating features, the range of sentence should be 8 to 12 years. An early plea of guilty in this type of case may attract a sentence of less than 8 years.”

39. Barrow JA in *Kenneth Samuel v The Queen* Criminal Appeal No. 7 of 2005, observed “In England, for example, it is established that the range of sentences for manslaughter is between three and seven years imprisonment”.

40. The jurisprudence of the Commonwealth Caribbean further demonstrates that, in appropriate circumstances, courts have not regarded non-custodial or rehabilitative sentences as inconsistent with the proper administration of justice in cases of manslaughter involving youthful offenders or exceptional mitigating circumstances.

41. In *Roger Naitram et al v The Queen* HCRAP No.s 5,6 and 8 of 2006, the Court of Appeal of the Eastern Caribbean said:

“17. Having taken the guidelines into account, the sentencing judge is enjoined to look at the circumstances of the individual case, particularly the aggravating and mitigating factors that may be present and impose the sentence which is appropriate. It follows therefore that a sentencing judge can depart from the guidelines if adherence would result in an unjust sentence. **The existence of a particularly powerful personal mitigation or very strong aggravating factors may be a good reason to depart from the guidelines. . . .**”

and

Sir David Simmons in *Bend and Murray v R*:

‘...Judges will still be free to tailor sentences according to the facts of a particular case. It must be remembered that, in our system, judicial discretion is at the heart of the sentencing process. That discretion will invite flexibility and from time to time will produce inconsistency. ...

At the end of the day sentencing is very much an art and not a science.’

42. In *R v Chisnell Desir* (Criminal Case No. 688 of 2009), the accused was convicted of manslaughter. He was sentenced to three years’ probation and required to keep the peace for another three years afterwards. The Crown did not appeal that sentence.
43. Likewise in *R v Fanel Joseph* (Criminal Case No. 43/2/2012) the accused pleaded guilty to manslaughter upon stabbing his brother to death. On March 2014, the convict was sentenced to ten (10) years’ probation. The Crown did not appeal that sentence.
44. Further, in *R v Martie* High Court Criminal Case No.9 of 2002, the accused was convicted of manslaughter after he plunged a *knife* into the deceased head. He was sentenced to forty hours community service.
45. Without actually submitting , it is clear that, with some downward adjustment the Director of Public Prosecutions relies on the now discredited so called guidelines on manslaughter sentencing in *Larry Raymond Jones* in seeking a sentence in the range of fifteen to thirty five years. The decision of the Court of Appeal in *Claude Lawson Gray* makes clear that *Jones* lays down no such guidelines.
46. Both the Director of Public Prosecutions and the convict rely on *Gray*. Barnett P writes extensively in a review of the range of sentences imposed for manslaughter in the Bahamas and other jurisdictions cases noting the “...several cases where courts in the Bahamas have imposed sentences that were less than 18 years for manslaughter” including *Desir* , and *Joseph*.. Neither case was appealed.

On this issue, Barnett writes:

“61. In *Raphael Neymour* John JA in paragraph 38 of his judgement suggested that no assistance could be obtained from cases where there was no appeal by the convicted person against sentence and where the Crown did not appeal

against sentence. This is a view shared by the Chief Justice. With respect, I do not agree.

62. ...the fact that the Crown did not challenge those sentences and this Court did not comment on the leniency of the sentences **entitles** a sentencing judge and this Court to infer that neither the Crown nor this Court regarded those sentences as being unduly lenient as to warrant interference by an appellate court.”

Respectfully, I adopt this dicta as apropos the sentencing exercise I now conduct.

47. Both cases, in particular *Joseph* whose fact circumstance mirror that of the convict, are apropos the sentencing exercise I now conduct.

48. Further, Barnett P had this to say on the appropriate sentence in particular cases:

“65. Light or lenient sentences for homicide, though not common, are not unusual nor unheard of in the common law world

...

67. In Grenada, in September 2017 in the case of **R v Joylyn James** GDAHCR20170/0018 the accused, a young female, pleaded guilty to manslaughter by negligence. She killed her 2 year old niece while playing with a pellet gun. She was sentenced to 2 years imprisonment which was suspended for two years. She was required to do community service as well.”

49. The Penal Code makes provision for the imposition of alternative punishments:

“124.(1) Where a person convicted of any summary offence or any crime punishable with imprisonment, and the court is of the opinion that, having regard to the youth, character and antecedents of the offender, or to the trivial nature of the offence, or to any extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment, or any other than a nominal punishment, or that it is expedient that the offender be released on probation of good conduct, the court may, instead of sentencing him at once to any punishment, direct and order that he be released on his entering into a

recognizance with or without surety or sureties, and during such period, not exceeding three years, as the court may direct, to appear for sentence when called upon, and in the meantime to keep the peace and be of good behaviour.”

Dame Joan Sawyer, writing for the Court in *The Attorney General v Richard George Campbell* SCCrApp. No.30 of 2004 affirmed both the applicability and appropriateness of the employ of s. 124 (1) in the conduct of the sentencing exercise:

“43. The portion of the subsection which we have underlined above, sets out a number of alternative courses which a court may take to postpone a sentence of imprisonment or to impose an alternative sentence of not more than three years probation or a nominal sentence only...”

50. The Court takes judicial notice of the Convicts actions during the period he was awaiting sentencing the Convict assisted in saving the life of a family, which may have, but for his intrepid intervention resulted in the loss of lives within his community. The court regards such conduct as demonstrative of maturity, and genuine rehabilitative potential.
51. I have agonized over the appropriate sentence. The mitigating factors far outweigh the aggravating. The convict is entitled to the benefit of his guilty plea. He is entitled to the benefit of the absence of criminal record. In my view, consistent the considerations laid down by Adderley JA in *Hepburn*, he is entitled to the benefit of exemplary conduct post trial, in this case whilst on bail pending sentence. In other words, when considered, his personal circumstances are exceptional (*Naitram*) which in my view, he is entitled to the benefit of.
52. I adopt as a useful starting point a sentence of six years. For this convict with no priors, I deduct one third. For his early plea to the charge of manslaughter, I deduct one third. For his exemplary conduct post conviction, whilst on bail and pending sentenceing, I deduct one third.
53. Having considered the submissions advanced by learned Counsel for the Convict and the Director of Public Prosecutions, together with all aggravating and mitigating factors material to sentence, this Court remains acutely mindful of the

seriousness of the offence and the irreversible loss of life occasioned thereby. Nevertheless, the Court is equally obliged to give proper weight to the Convict's age and level of maturity at the material time, his absence of previous convictions, his conduct subsequent to the offence, and his demonstrated capacity for reform.

54. In all the circumstances of this case, the Court is satisfied that the interests of justice would be best served by the imposition of a rehabilitative and non-custodial sentence.

55. Accordingly, the Convict is sentenced to a term of three (3) years' probation, after to which the convict to enter into a bond to keep the peace for another three years.



Williams J.

29th May, 2026