

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
CRIMINAL DIVISION  
2016/CRI/VBI/232/9**

**B E T W E E N**

**REGINA**

**Respondent**

**AND**

**CHRISTOPHER MCQUEEN**

**Convict**

**Before: The Honourable Madam Justice  
Mrs. Cheryl Grant-Thompson**

**Appearances: Mr. Roger Thompson -  
Crown Counsel**

**Mr. Bjorn Ferguson - Counsel  
for the  
Convict**

**Date of Hearings: 5<sup>th</sup> June, 2019 & 12<sup>th</sup> September,  
2019, 1<sup>st</sup> October, 2019,  
February 2020 for Sentencing**

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**S E N T E N C I N G J U D G M E N T**

**Manslaughter By Provocation - 299 (2) Penal Code, Ch.  
84, Larry Kaymond Jones; Patrick Alexis Jervis; and  
Chad Goodman; Kevin Smith.  
(All Court of Appeal)**

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## **GRANT THOMPSON, J**

### **INTRODUCTION**

1. On the 6 May, 2019, a jury was empaneled to try Christopher McQueen for the Murder of Martin Nixon on Tuesday, 23<sup>rd</sup> August, 2016 at New Providence. Murder, was charged contrary to section 291 (1) (b) of the Penal Code, Chapter 84. Thereafter, Mr. McQueen asked to change his plea. The facts were accepted as read. He indicated to me he was not coerced or forced to change his plea. He subsequently pleaded guilty to Manslaughter by Reason of Provocation, contrary to section 293 of the Penal Code. A probation report was requested. Sentencing was adjourned to the 1 October, 2019.

### **THE FACTS**

2. The facts as posited by the Probation Officer and accepted by the Convict read as follows:

*“The Concerned pleaded guilty to the offence. He expressed remorse for his actions and stated that he wished he could apologize to the victim's family because he did not intend to kill Mr. Martin Nixon. In relating the circumstances surrounding the present offence, he stated that on the day in question, he was “hanging out” at S & Y Sporting Lounge on Blue Hill Road South. He left the Lounge and walked towards a convenience store nearby to purchase a Backwood cigarette. While walking towards the store he observed the victim, Mr. Martin Nixon and his girlfriend in the road arguing. Reportedly, as he approached, Mr. Nixon accused his girlfriend of “seeing other people” and turned to look in the Concerned's direction. The Concerned reported that he asked Mr. Nixon who he was referring to. He claimed Mr. Nixon told*

*him he meant him and stated “you know we get all the guns.” At this point, the Concerned said he felt threatened. As a result, he stated he returned to the Lounge and told his friend, Kyle Newbold (former co-defendant in this offence) about what had transpired.*

*The Concerned reported that Kyle suggested they go back to where Mr. Nixon and his girlfriend were, so he agreed. He related that as they were walking towards the area, Mr. Nixon proceeded to walk towards them with his hand under his shirt. He alleged that Kyle pulled out a gun from his pants and he took the gun from Kyle, and then shot Mr. Nixon once in his leg; however three (3) bullets lodged out of the gun. He and Kyle then left the scene and returned to the Lounge, where he claimed he called for an ambulance. He did not remain in the area and was arrested several days later for the offence.”*

### **THE VERDICT**

3. The juries were directed by me to return a verdict of guilty of Manslaughter by Reason of Provocation, and to find the Defendant not guilty of Murder. The Crown Nolloed the case against the co-accused Kyle Newbold on the 3<sup>rd</sup> May, 2019. He then agreed to give evidence for the Crown.

4. Section 185 of the Criminal Procedure Code, Chapter 91 ('the CPC'), provides as follows:

*“The Court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the sentence proper to be passed and may hear counsel on any mitigating or other circumstances which may be relevant.”*

In this regard the Court requested a Probation Report.

5. The Probation Officer Mrs. Kalesa Simmons, Senior Probation Officer summarized as follows:

*“The Concerned was reared in a nuclear structure home environment until age six (6) years, when his parents separated. As a result of this parent's separation, unfortunately his relationship with his father was severed until his teen years. He matriculated through both the private and public educational system until the tenth (10) grade, when he became a teen father and discontinued his education. However, he pursued higher education a few years later and earned a Certificate in Auto Mechanics at the Bahamas Technical and Vocational Institute.*

*The Concerned then sought employment and worked at various business establishments until approximately a few months prior to his incarceration for this offence. Persons interviewed for this report spoke favorably about his character. He was described as a quiet, fun loving mannerly, supportive and attentive father. They also expressed shock at his actions in this offence. His mother even stated that 'his actions are not the person that she knows.’”*

*The Concerned is a single father of two (2) children. He admitted guilt and took responsibility for his actions, which resulted in the death of Mr. Martin Nixon. However, in retrospect he had walked away from the initial verbal altercation, but decided to return and confront the victim. He also allowed his ego and anger to control the unfortunate outcome of this incident.*

*It is humbly being recommended that all the above-mentioned be taken into consideration when sentence is passed.’”*

## **AGGRAVATING FACTORS**

6. The Crown submitted that there were several aggravating factors against the Convict; namely:

- i) Seriousness of the offence;
- ii) Prevalence of this type of offence;
- iii) He left the scene after a previous altercation with the deceased but returned voluntarily with a firearm and shot the deceased;
- iv) An offensive instrument was used namely, a firearm;
- v) The weapon was never retrieved;
- vi) The Convict shot the deceased in the presence of others; and
- vii) High level of crime of the homicide in this country

7. The following was identified before me as a **mitigating factor for the Convict**; the fact that he has no previous convictions, and the fact that he pled guilty to a lesser offence sparing the witnesses and the jury a full trial.

## **SENTENCE OF THE OFFENDER**

8. In determining the seriousness of the offence, the Crown submitted that the range of sentence should be as follows:

- (i) The **most serious** of offences are those in which a weapon is used, resulting in serious injury;
- (i) The offences which are of **medium seriousness** are those in which a weapon is used, however, there is either no injury or very minor injury; and
- (ii) The **least serious** of offences are those in which no

weapon is used, or despite there being a weapon, mere threat or minimal force is used.

In the instant case, they submitted that the Convict inflicted serious injuries on Martin Nixon, which resulted in his death. Accordingly, given the gravity of the offence and having regard to the extensive aggravating factors, detailed above the Crown respectfully, and submitted that this offence fell within the upper spectrum of the sentencing scale, i.e. of the most serious of offences.

## **LAW**

### **MURDER**

9. (i) The Convict was originally charged, Contrary to section 291(1)(b) of the Penal Code, Chapter 84. The Crown alleged that Christopher McQueen on Thursday, 23<sup>rd</sup> August, 2016 at New Providence did murder Martin Nixon. The Manslaughter provision provides:

S. 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.*”

The Convict was not convicted of “**Manslaughter by Negligence**” but rather strict Manslaughter. It appears to be Parliament's intention to inflict stiffer penalties on persons committing this offence. He pleaded guilty to Manslaughter by virtue of Provocation.

10. I was invited by the Prosecution in relation to Christopher McQueen to consider that the circumstance of the offense and the offender is one to warrant the range of sentence of 18 to 35 years as conferred by the Bahamas Court of Appeal in the following cases:-

i) **Larry Raymond Jones SCCrApp. Nos. 12, 18 and 19 of 2007**

The Court of Appeal stated at paragraph 15, *“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 offence was committed and whether the convicted person showed any remorse for the killing (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.”*

Therefore, it was submitted that should this court consider a term of years instead of life imprisonment, then 18 to 35 years would be within the sentencing guidelines outlined by the Court of Appeal of The Bahamas.

ii) **The Attorney General v Kevin Smith SCCrim. App No. 261 of 2012**

The Court of Appeal indicated that a judge should not go below the sentencing guidelines except in the most exceptional of cases. The Court of Appeal stated at paragraph 21 that “Offsetting the severity of the sentence and acting as a counterbalance would be the presence of a partial excuse or other relevant factor which may call for a great degree of mercy. Circumstances may exist then to enable a sentencing judge to go below the range suggested by the President. However, the presence of exceptional circumstances and/or factors must be disclosed on the record by the sentencing judge so as to justify the reduced sentence. Thus,

if the sentencing judge was to stray below the recommended range, the decision for doing so must be demonstrably explicable.”

iii) **The Director of Public Prosecutions v. Caryn Moss 230 & 238 of 2018**

The Court of Appeal stated at paragraph 87 that, “Bearing the foregoing in mind it must necessarily be an error in principle for a trial judge to acknowledge guidelines that have been set by this court then proceed without adhering to them.”

11. I remind myself that Sentencing must always be proportionate to the gravity of the offence and should prompt a sense of responsibility in the offender for the offence committed. The object of sentencing is to promote a respect for the law and order, maintain a peaceful and safe society, and discourage crime by the imposition of sanctions. Sentencing should also be aimed at the rehabilitation of the offender so that he may reform his ways to become a contributing member of society. Such sanctions for breach of the law are provided by law for the means of sentencing.

I am guided by the four classical principles of sentencing namely retribution, deterrence, prevention and rehabilitation.

- (i) **Retribution** – In recognition that punishment is intended to reflect societies and the legislative abhorrence of the offence;
- (ii) **Deterrence** – to deter potential offenders and the offender himself from recidivism;
- (iii) **Prevention** – aimed at preventing the offender through



incarceration from offending against the law and thus protection of the society; and

- (iv) **Rehabilitation** – aimed at assisting the offender to reform his ways so as to become a contributing member of society.

The Court is of the view that the Convict should be deterred from this type of offence – and other members of society who are like minded should be deterred. However, having said that I believe that this Convict is capable of rehabilitation.

12. The Court of Appeal decision in **The Attorney General v Larry Raymond Jones et al is relevant**. In this decision, Dame Sawyer P (as she then was) at paragraph 15 of the judgment articulated the following:

***“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, bearing in mind the character of the convicted person, the circumstances in which the offence was committed and whether the convicted person showed any remorse for the killing (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.” (Emphasis added)***

13. It should be noted that the predominant considerations varies from case to case. This point was articulated in the case of **Edwin Farfan v. The State Cr App No. 34 of 1980 (unreported)** 7 May 1984. In that case, the court felt that the object of sentencing (as declared in Benjamin) should not be 'over-strained'. Each case must depend on its own circumstances

and various factors must be considered by the court in deciding which principle of sentencing should predominate.

14. The Crown submitted that the aim of punishment in the instant case should be retribution and deterrence.

15. The Court of Appeal of The Bahamas has set guidelines in the range of 18-35 years in respect of persons convicted of Manslaughter. Courts may, only in exceptional circumstances, go outside of the range set. I believe that each case must be determined on its own merits. See **Attorney General v. Kevin Smith S.C. App. No. 261 of 2012.**

16. In **Raphael Neymour v The Attorney General SCCr. App. No. 172 of 2010**, the appellant was convicted of Manslaughter by Reason of Provocation and was sentenced to five years imprisonment. The Crown appealed the sentence on the ground that it was unduly lenient. The Court of Appeal increased the sentence to twenty years. In delivering the judgment of the Court of Appeal, John J.A. had this to say at paragraphs 29 and 30):

***“29....Counsel for the Attorney General referred to the decision of this court in Attorney General v Larry Raymond Jones, Patrick Alexis Jarvis and Chad Goodman (SCCR. App. Nos. 12, 188 [sic] and 19 of 2007). He referred in particular to the statement of James Sawyer P (as she then was) 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. 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 offence was committed and whether the convicted person, the circumstances in which the offence was committed and whether the convicted person showed any remorse for the killing (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.”***

***30. We were also referred to the case of Andy Francis v R No.133 of 2009 where the Court of Appeal in substituting a conviction for Manslaughter where the appellant had been convicted of Murder did not interfere with the sentence of 25 years imposed by the trial judge. In so doing, the learned President said: “As to the sentence of twenty five years, we find the same to be within the mid-range of the sentencing scale for Manslaughter and appropriate in all the circumstances.”***

17. The Bahamian cases of **Regina v. Musgrove [2012] 1 BHS J. No. 107 and Regina v. McPhee [2012] 1 BHS J. No. 99.** In Regina v. Musgrove, the Convict was arraigned for the Murder of David Bowleg Jr. but after trial was convicted of Manslaughter by Reason of Provocation. The Learned Judge Justice Indra Haiprashad- Charles in sentencing the Convict to 18 years imprisonment from the date of his conviction echoed the judicious words of John J.A. at paragraph 42 of the judgment in Raphael Neymour (supra):

***“The Bahamas is facing a wave of uncharacteristic and unprecedented violence. While we accept the general approach adopted by the English Court of Appeal in the case of Suratan and Ors (supra), the court is very mindful of the fact that The Bahamas is culturally different from England and we must therefore be cautious not to slavishly follow the courts of England on sentencing issues. The court has a duty to send out***

***a strong message to the community at large and particularly to those involved engaged in disruptive behaviour that as society advances a higher measure of self-control is called for. The sentence in our view ought to serve as a deterrent to the appellant and those minded to act in a similar manner.”***

18. In these circumstances, and applying the general principles of sentencing and the Court of Appeal guidelines as stated above along with balancing the mitigating and aggravating factors in the instant case, the Crown proposed that a sentence of twenty (20) years is appropriate.

19. The Crown further submitted that the sentence will 'send a strong message to the community at large that if we are to advance as a society, this type of behavior is not acceptable, the sentence of the court must be able to act as a deterrent to the Convict specifically and to any other person minded to act in a similar fashion'.

### **PLEA IN MITIGATION**

20. On the 1 October, 2019, Mr. Bjorn Ferguson made a plea in mitigation. Mr. Ferguson on behalf of the Convict recommended a period of imprisonment of Eight Years. He urged upon the Court that the Larry Raymond Jones sentencing directions and guidelines on Manslaughter should essentially be ignored as they were not on all fours with the facts in the instant case. He described the fatal events on the day in question as a series of unfortunate events. He asked the Court for leniency.

21. He relied upon the following authorities:
1. Despite the range of sentencing guidelines laid out in “**Jones**” submitted that the Court should look at all the surrounding circumstances in this matter before sentencing the Convict Mr. McQueen. Thus, in the case of **Attorney General v Todd [2011] BHS J. No 32** (case of Todd), it was highlighted that The Court is not required to be strict in its approach to sentencing but that the court in each case should apply not only the guidelines in the previous case such as “Jones”, but give weight to all the various competing considerations. He also referred me to the decision in **Mikio Black v R** where the court has the power to impose the sentence of twelve (12) years on a conviction of Manslaughter by Provocation. Thus, he submitted it was evident that despite the sentencing guidelines laid down in Larry Raymond Jones the court has the power to impose the sentence that the court deems reasonable after considering all the relevant factors surrounding each case.
  2. Subsequently, in the case of the **Commissioner of Police v Brian Botham, MCCrApp 135 of 2015** it was clear that courts must be careful not to be strait jacketed by precedents. In the Botham case it as highlighted, that **VK Rajah, JA in Kalaiarasi d/o Marimuthu v Public Prosecutor [2012] SGHC 58** quoted Nigel Walker at page 6 of “**Why Punish**”: where the author asserted:  
*“That a sentencer who regards his consistency with his colleagues practice as a complete justification is rather like a priest who performs ritual actions without asking himself why they are a part of the ritual. Even a ritual has meaning. Punishment is something more than a series of hopefully*

***consistent decisions: Like other social institutions it must serve or appear to serve one or more desired functions.”***

***Rajah, JA further asserted:***

***“That it is indisputable that sentence must serve a “social purpose”. Further, that it is axiomatic, other than in situations necessitating mandatory fixed sentences, that when the sentence meted out must be rigorously justified by reference to settled sentencing objectives and principles as well as facts of each case.”***

3. In Botham referring to a statement made by Lord Bingham CJ in the case of Tony Avis and others (1998) 2 Cr App R (S) 178 stated that:

“When considering circumstances of offenders, sentencers should have regard to such of the following as may be relevant in the particular circumstances which are:

- An early plea of guilt, which he stated will always be a strong mitigating factor that should always be taking into account when discounting a sentence on the part of the offender;
- An expression of remorse;
- Young age (if applicable)
- Employment status;
- Possibility of rehabilitation;
- Cooperation with the police investigation.”

4. Counsel for the Convict asked me to take into consideration the following:

- (a) Mr. McQueen is still very young.
- (b) He pled guilty and saved the court precious judicial time by

avoiding a trial.

- (c) He is only 26 years of age and the father of two young children
- (d) His children are financially dependent upon him.
- (e) He was gainfully employed for the entirety of his adult life.
- (f) He assisted the police with the investigation by answering the questions and also taking them back to the scene and pointing out what transpired.
- (g) He is a strong candidate for rehabilitation and expressed by the Senior Probation Officer, Mrs. Kalesa Simmons.
- (h) Mr. McQueen had no antecedents and therefore was a person of good character. This is extremely commendable in our society to have an individual at the age of twenty-six years and possess a clean record.
- (i) Mr. McQueen did not complete high school because he became a teen father. This however, did not prevent Mr. McQueen from pursuing higher education at The Bahamas Technical Vocational Institute. He successfully completed the Auto Mechanic program and received a certificate to evidence his completion.
- (j) Mr. McQueen also expressed remorse and indicated this to the social officer and the court. He also wrote a letter expressing his remorse to be read and delivered to the family of the deceased.

22. Counsel drew to my attention pointing out that Mr. McQueen's probation report on page 4 revealed that Mr. McQueen was gainfully employed for all of his adult life before this incident. They submitted that demonstrated his industry and productivity as a member of society. I was

reminded that sentencing is an art.

23. Having regard to all the circumstances of this case, The defence humbly asked the Honourable Court to consider the above authorities and the information provided in Mr. McQueen's probation report and to impose a sentence of ten years.

24. In R. v Donovan George Barnes, Justice Maureen Crane Scott as she then was in the Barbados High Court found in Manslaughter case that:

***“Order of the Court:, Donovan George Barnes, you are hereby sentenced to a term of imprisonment of 8 years for this offence to commence with immediate effect. From this sentence and in keeping with the CCJ decision in Romeo Hall, there will be deducted, the full period of 830 days [i.e.. 2 years 100 days] which you have to date spent on remand since November 18<sup>th</sup>, 2010 awaiting final resolution of the matter. In the result, you will be required to serve the additional 5 years 265 days in custody for this offence.”***

## **RELEVANT CONSIDERATION**

### **SENTENCE**

25. Before me the Convict was quiet and contrite his remorse was evident and when the family members of the deceased family gave evidence in the sentencing hearing he appeared pained at the evident distress that he had caused them. He did not plead guilty at the first opportunity indeed he did not pleaded guilty until we had empaneled a jury and his previous co-defendant was coming to give evidence against him (slated as an early witness for the Crown.)



26. However I am of the view that is never too late to do well and he did plead guilty thereby saving us a trial. Also he expressed remorse to the probation officer (a rare fact). He has no antecedents and previously was a hard working driver young father of two young children. He assisted the police with their investigation.

27. The crime was brazen, committed in broad daylight, and a calmer head should have prevailed with the Convict not re-engaging the deceased. But all of those factors call for a perfect world. He discharged a firearm fatally and this is not the sort of conduct we wish the young men of our community to emulate or to think is acceptable. The sentence therefore is meant to be deterrence to other young men.

28. However, I am of the view that our Convict can be rehabilitated, that power should be tempered with mercy. I am recommending that he receive anger management counseling and that he be permitted to attend classes in his chosen field to improve his skills upon his return to our society.

29. I took a third off of his sentence for his guilty plea (30 years became 20 years) and based on my view that this Convict can be rehabilitated and will continue making meaningful contributions to the society. Accordingly, I sentence him to Twenty Years and two months Imprisonment – I hereby deduct the time he has already spent in custody awaiting trial which I am advised is 38 months. This leaves a sentence of which will commence from the 6<sup>th</sup> May, 2019 when he was convicted for Manslaughter by Provocation.

30. Mr. Christopher McQueen you are hereby sentenced to serve a term of Seventeen years imprisonment by this Honourable Court.

31. I promised to put my reasons in writing this I now do.

Dated the 3 day of April 2020

**The Honourable Madam Justice  
Mrs. Cheryl Grant-Thompson**