

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Criminal Side  
Voluntary Bill of Indictment No. 95/4/2018**

**REGINA**

**-v-**

**PHILLIPA MARSHALL**

**BEFORE:** The Honourable Mr Justice Bernard Turner  
**APPEARANCES:** Mesdames Cephia Pinder-Moss and Tommel Roker for the  
Crown  
Mr Bjorn Ferguson for the Defendant

**SENTENCING DATE:** 31 October & 12 November 2019

## **DECISION ON SENTENCING**

**TURNER J**

Philicia Phoebe Marshall was born on 23 December 2016 to Isaac and Phillipa Marshall, the third of three children born to that couple, her other siblings being born in 2010 and 2013. On the morning of 28 December 2017, four (4) days after her first, and ultimately her only birthday, she was rushed by ambulance to the Princess Margaret Hospital suffering from second degree burns over what was estimated by the emergency room physician as being 37% of her body. She succumbed to those burn injuries on Valentine's Day 2018, forty-seven (47) days after they were inflicted.

2. According to the pathologist, Philicia Marshall died as a result of klebsiella pneumonia sepsis complicating the partial and full thickness thermal burns involving up

to 43 percent of her total body surface area involving her chin, chest, abdomen, front and back of her lower limbs, and the back of her right forearm. In the pathologist's opinion, the odds were against a person surviving burns over 43% of their body. He noted that in spite of surgical intervention at the hospital, inclusive of debridement and skin grafts to both lower limbs and the abdomen, that the child died due to the onset of the sepsis.

3. On 6 April 2018 the mother of this child, Phillipa Marshall, was charged with manslaughter by the Police, the charge being upgraded to murder by a Voluntary Bill of Indictment (No. 94/4/2018) filed 15 May 2018 in the Supreme Court Registry.

4. On 16 July 2018, a jury was empaneled to try the Defendant's (now convict's) fitness to plea to the charge of murder. The prosecution called Dr. Kirk Christie, an expert in general psychiatry. The matter was adjourned for a week so that Dr. Christie could examine Ms. Marshall further and provide an updated report on her condition. That report, dated 23 July 2018 opined that the Defendant was sane and fit to stand her trial. On 24 July 2018, the jury returned a verdict consistent with the Dr. Christie's expert opinion.

5. The trial of the charge of murder commenced on 17 June 2019. The evidence at the trial established that the deceased child was laying down with her father and her siblings in the living room of their home while the defendant/mother was seen to be walking into and out of the house. During the course of the evening, the husband of the convict observed that his wife didn't seem right, he also indicated in evidence that he smelled gasoline. He later noticed that his daughter was no longer on the floor in the living room with him and the other children and when he went to check on the whereabouts of his daughter he was told by his wife that the daughter was in the bed with her. Later that evening the husband woke to the sounds of screams and when he went to check the children's room, he found the door locked. He managed to open the door lock with a knife and when he got into the room, he saw smoke and his daughter in his wife's arms, with her skin falling off.

6. Upon the arrival of the Police at the home, the mother informed the police that demons told her to kill herself and her baby and that she threw gasoline on the baby and lit her afire.

7. On 17 July 2019 Phillipa Marshall was found Guilty of the Murder of her daughter 12-0. Probation and psychiatric reports were requested on behalf of the convict and on the 31 October 2019 the Probation report was presented to the court, followed by a psychiatric report, by Dr. John Dillett, on 12 November 2019.

8. The information in the Probation report was derived from a wide variety of sources, inclusive of the convict herself, her family members, including her husband, (who further provided an oral victim impact statement in court), her neighbours and a wide variety of clergy persons.

9. A common theme of each of the persons interviewed were concerns about the convict's mental health, pre-dating the incident resulting in the death of her daughter. It was also noted that there was a history of stories of mental illness in the convict's paternal family, her grandmother and an aunt allegedly being known as being mentally unstable. Her husband, in the probation report, related that after the birth of their second child the convict started to indicate that she was hearing voices in her head. He also indicated, and this was confirmed by the neighbours interviewed, that she would drive to a neighbour's home in the middle of the night and blow her horn, long and hard. One such neighbour indicated that she would sometimes shout from her window **"Stop working obeah"**. Another neighbor indicated that when she approached the car during one of the horn blowing episodes, that **"it was like she did not see or hear me. It was like her body was there but she was not."**

10. It was also related in the report that she had attempted suicide in 2016 (the year the child, the subject of the murder charge, was born), after which she was seen by a psycho therapist and enrolled in a support group. The report indicates that the convict

acknowledged that she stopped taking prescribed medication because she continued to hear voices in her head.

11. The clergy persons who saw the convict opined that she had mental issues to be addressed by a mental health professional, although one indicated that she performed what was described as an exorcism. That event was further described by the brother-in-law of the convict, who indicated that he was present, as being a frightening experience, such as he had never seen, with the convict speaking without opening her mouth, as if, **“..she had a demon inside her.’**

12. In addition to the Probation Officer, as indicated, the husband of Ms. Marshall gave an oral victim impact statement, speaking to the understandably difficult present family circumstances and the impact on the remaining children, being absent the physical presence of their mother and little sister in the home.

13. The defence also called another family member and a pastor as character witnesses, both of whom expressed that in their view, that the convict was not a violent person but a family oriented person. Bishop Minnis of Greater Bethel Cathedral, a Pentecostal church, indicated that she was a member of his church from she was a little girl, and opined that he considered that she was under a spiritual attack, having been called to her home on several occasions to pray for her, after which, there was an improvement, but then a re-occurrence of this spiritual attack.

14. The family member, an in-law, John Carey, indicated that he could find no character flaws in the convict, that she was always kind and helpful, was not a violent person and that she showed care and concern for her deceased daughter, but that she experienced torment for the past several years, from which she sought help. In his view, the convict deserves rehabilitation and treatment, not retribution and punishment; more than anything else, she deserved, mercy.

15. Finally, Dr. John Dillett, a consultant psychiatrist, was called during the sentencing phase of this matter. As per his report, dated 18 September 2019, he stated that:

**“Although her thought processes were intact, her thought content contained paranoid delusions and delusions of thought insertion and mind control. Perception analysis revealed both auditory and visual hallucinations. Mrs. Marshall’s cognitive skills were intact. Insight and judgement were questionable.**

**Mrs. Marshall can comprehend the nature of the charge, differentiate between innocence and guilt, understand the consequences of being found guilty, follow the process of trial, process of sentencing and instruct legal counsel.**

**Opinion**

**Mrs. Marshall meets formal criteria for Schizophrenia, and she reports to continue to have active hallucinations and delusions. She is sorrowful about the loss of her child and is remorseful of her involvement in the child’s death. Notwithstanding the presence of psychotic features her cognitive indices are intact, and she meets full fitness criteria to attend court proceedings.**

**Positive family history for mental illness, history of head trauma and persistence of symptoms with present pharmacotherapy intervention suggest a difficult prognosis in the short term. As a result, it is recommended that a follow up review/evaluation be performed one to two (1-2) years from now to re-evaluate the patient’s condition and prognosis. It is strongly advised that she be monitored closely by prison medical services and forensic psychiatric services at the Bahamas Department of Corrections.”**

16. On the question of sentence, the Defence position was that this case was one which fell within the exception to the sentencing guidelines established by the Court of Appeal, in the decision of Dame Sawyer P. (as she then was), in **The Attorney General v Larry Raymond Jones, Patrick Alexis Jervis and Chad Goodman, Bahamas Court**

of Appeal, Nos. 12, 18 & 19 of 2007, where the Learned President stated, beginning 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 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.**

**16. We accept that some cases in which accused persons are convicted of manslaughter instead of murder are as heinous as some murders but they are able to bring themselves within one or more of the partial excuses in the Penal Code such as provocation, diminished responsibility or excessive self-defence, to name a few.**

**17. In our judgment, where, for one reason or another, a sentencing judge is called upon to sentence a person convicted of a depraved/heinous crime of murder and the death penalty is considered inappropriate or not open to the sentencing judge and where none of the partial excuses or other relevant factors are considered weighty enough to call for any great degree of mercy, then the range of sentences of imprisonment should be from thirty years to 60 years, bearing in mind whether the convicted person is considered to be a danger to the public or not, the likelihood of the convict being reformed as well as his mental condition. Such a range of sentences would maintain the proportionality of the sentences for murder when compared with sentences for manslaughter.”**

15. The Defence position was that this matter fell squarely within the language found at paragraph 17, in that this was a matter in which there were **“other relevant factors.... considered weighty enough to call for any great degree of mercy..”** to justify the

Court's departure from the normal range of sentence of 35 to 60 years for a conviction for murder.

16. Specifically, counsel pointed to the evidence from the psychiatrist, Dr. Kirk Christie, called during the defence stage of the trial and the psychiatrist, Dr. John Dillett called during the sentencing portion of the trial and submitted that the evidence of both of these doctors indicated that the convict was suffering from and continues to suffer from, Schizophrenia. He submits that notwithstanding the rejection by the jury of the defences of both insanity and diminished responsibility, the uncontroverted evidence of each of these doctors brings the convict within the category of murder convictions for which the Court of Appeal implicitly recognized that a great degree of mercy was justified, carrying the case outside of the normal range of 35 to 60 years.

17. Counsel next submitted that a justified departure extended not only to the length of any sentence, but to the issue as to whether the convict ought to be, in the circumstances of this offender, punished at all, as opposed to being treated for her mental condition. In this regard counsel referred the court to section 25 of the Mental Health Act and submitted that the convict ought to be dealt with by the court pursuant to the provisions of that section. The section itself falls under Part VI of the Act, which is headed "**PART VI ADMISSION AND TREATMENT OF PERSONS CONCERNED IN CRIMINAL PROCEEDINGS**". The section itself reads:

**"25. (1) Where —**

**(a) a person is —**

- (i) convicted in the Supreme Court of an offence other than an offence the sentence for which is fixed by law; or**
- (ii) convicted by a magistrate of an offence punishable on summary conviction by imprisonment; or**
- (iii) charged before a magistrate with an act or omission punishable as an offence on summary conviction by**

imprisonment and the magistrate is satisfied that such person did the act or made the omission charged; and

- (b) the judge or magistrate is satisfied by the oral or written evidence of two medical practitioners that —
  - (i) such person is suffering from mental illness, psychopathic disorder, subnormality or severe subnormality; and
  - (ii) the mental disorder is of a nature or degree which warrants the detention of such person in hospital for treatment; and
- (c) the judge or magistrate is of the opinion having regard to all the circumstances including the nature of the offence and the character and antecedents of such person and to the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of an order under this section;

the judge or magistrate may by a hospital order authorise the admission of that person to, and his detention in, such hospital as is specified in the order and may specify in the order the period during which such person should be so detained, which shall not be longer than the sentence of imprisonment which the judge or magistrate could have imposed for the offence with which such person was charged.

(2) Where a hospital order has been made under this section, the judge or magistrate shall not impose any punishment in respect of the offence but may make any other order which the judge or magistrate has power to make apart from this section.

(3) Of the medical practitioners whose evidence is received in accordance with subsection (1) of this section at least one shall be a practitioner having special experience in the diagnosis and treatment of mental disorder.”



Section 2 of that Act defines certain of the terms used in section 25 as follows:

**“ “mental disorder” means mental illness, arrested or incomplete development of the mind, psychopathic disorder and any other disorder or disability of mind, and “mentally disordered” shall be construed accordingly;**

**“Minister” means the Minister responsible for Medical, Nursing and Health Services;**

**“patient” means a person suffering from or appearing to be suffering from mental disorder;**

**“psychopathic disorder” means a persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the patient, and requires or is susceptible to medical treatment;**

.....

**“severe subnormality” (otherwise known as severe mental retardation) means a state of arrested or incomplete development of mind which includes subnormality of intelligence and is of such a nature or degree that the patient is incapable of living an independent life or of guarding himself against serious exploitation, or will be so incapable when of an age to do so;**

**“subnormality” (otherwise known as mental retardation) means a state of arrested or incomplete development of mind (not amounting to severe subnormality) which includes subnormality of intelligence and is of a nature or degree which requires or is susceptible to medical treatment or other special care or training of the patient.”**

18. The Crown’s response on this issue was that this section does not apply to convictions for the offence of murder as murder has a penalty which is fixed by law. On the issue of sentence, the Crown’s position was that, having regard to the fact that the convict’s partial defences were all rejected by the jury, that the conviction for murder

should carry a sentence within the lower, but within, the range of appropriate sentences as indicated by the Court of Appeal in Jones (supra). The submission was that an appropriate sentence would be one of thirty years for the offence of murder.

19. The submission that the offence of murder is not the type of offence for which the court can deploy, in appropriate circumstances, the provisions of section 25 of the Mental Health Act, on the basis that the sentence for murder is one fixed by law requires some consideration.

20. The Mental Health Act chapter 230 (the Act) came into force in 1969 and is now fifty years old; section 25 of the Act is unchanged since its initial introduction. At that time, the penalty for murder was understood to be a mandatory penalty of death. That position has since changed due to decisions of the Judicial Committee of Her Majesty's Privy Council and a subsequent legislative amendment to the Penal Code (Act no. 34 of 2011). The penalty for murder is now found in section 291(1) of the Penal Code, it reads:

**291 (1) Notwithstanding any other law to the contrary--**

**(a) every person who is convicted of murder falling within section 290(2)(a) to (f) 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.**

21. The convict was charged with murder pursuant to section 291(1)(b), which means that the potential sentence ranges from life imprisonment to a sentence within the range of 30 to 60 years. These potential penalties, counsel submits, are effectively sentences fixed by law, which therefore excludes a person convicted for murder from the provisions of section 25 of the Mental Health Act.

22. This submission is complicated by, however, the provisions of the Abolition of Mandatory Minimum Sentences Act, 2014, the entirety of which reads:

**“2. Where a provision in any law has the effect of requiring a court to impose a minimum term of imprisonment that provision, to the extent of that requirement, shall be of no effect.”**

As I understand that law, a court is required to treat any mandatory minimum period set in any law as being of no effect. There is nothing in that Act which purports to exclude it from being applicable to section 291 of the Penal Code, which was in existence at the time of its passage, and therefore, there is not fixed minimum penalty for murder.

23. The guidelines which the Court of Appeal pronounced in Jones (supra), remain the applicable guidelines as to an appropriate sentence as clearly demonstrated in the decision of the Court of Appeal in Attorney-General v Kevin Smith, No. 261 of 2012, where it was stated, beginning at paragraph 20 (after referencing paragraph 17 in Jones (supra)):

**“20. While this passage is generally cited for the range of sentences mentioned, namely, thirty to sixty years, recourse to this range is conditioned by the phrase “depraved/heinous crime of murder”. Also to be taken into consideration by the sentencing judge are such factors as:**

- i) whether or not the convict continues to be a danger to the public;**
- ii) the likelihood of rehabilitation; and**
- iii) the convict’s mental condition.**

**21. 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.”**

**22. It must be remembered that when the respondent killed the deceased, Parliament had not yet enacted the Penal Code (Amendment) Act, 2011 differentiating between murders that attract the death penalty and murders that did not. Moreover, when Larry Raymond Jones was decided that legislation was not in place. There was therefore a greater latitude for departure from the thirty to sixty years recommended by the President, Dame Joan Sawyer pre 2011 than thereafter”**

However, I do not find that the guidelines themselves would exclude the offence of murder from being an offence a conviction for which, if the other conditions are met, could not be dealt with pursuant to section 25 of the Mental Health Act. As the Court noted in Smith (supra):

**“Circumstances may exist then to enable a sentencing judge to go below the range suggested by the President...”**

and as earlier indicated in that passage,

**“...recourse to this range is conditioned by the phrase “depraved/heinous crime of murder”. Also to be taken into consideration by the sentencing judge are such factors as:**

- i) whether or not the convict continues to be a danger to the public;**
- ii) the likelihood of rehabilitation; and**

**iii) the convict's mental condition."**

24. In exercising my discretion in sentencing, I must consider those factors which are both mitigating and aggravating about the offence and the offender. As indicated by the Court of Appeal, circumstances may exist which enable a sentencing judge to go below the range suggested by the President (in Jones).

25. Having found that nothing precludes the court from exercising any other statutory authority, such as section 25 of the Mental Health Act, in respect of a conviction before the court in order to arrive at a just and proper disposition of a criminal matter before the court, even a matter as serious as a conviction for the offence of murder, I have considered whether the convict's conviction falls within the parameters of section 25 of the said Act. In that regard I find the following:

- a. That the offence of murder for which the convict was convicted is an offence, other than an offence the sentence for which is fixed by law;
- b. I am satisfied by the oral and written evidence of Dr. Christie, called in the defence stage of the trial and Dr. Dillett, called in the sentencing stage, that the convict is a person suffering from a mental illness as defined in the Act, that is to say, schizophrenia;
- c. that both of those doctors have special experience in the diagnosis and treatment of mental disorder;
- d. I am satisfied that the mental disorder is of a nature or degree which warrants the detention of Ms. Marshall in hospital for treatment; and
- e. I am of the opinion, having regard to all the circumstances including:
  - i. the nature of this offence, which is to say, the killing of her infant child by lighting her on fire, a fire which also caused her some injuries, accompanied by the explanation proffered at the very scene of the incident that demons told her to kill herself and her baby, and

- ii. the character and antecedents of Ms. Marshall as indicated in the evidence during the trial by her husband, and during the sentencing phase by all of the persons who came to testify as to her character and personality, and
- iii. the other available methods of dealing with Ms. Marshall,

that the most suitable method of disposing of the case is by means of an order under section 25 of the Mental Health Act.

26. I therefore order the admission of Ms. Phillipa Marshall into the hospital approved for the medical treatment of mental disorders, Sandilands Rehabilitation Centre, for a period of six (6) years, unless a court determines, based on a medical report submitted to the court by a doctor with special experience in the diagnosis and treatment of mental disorders, that she should be earlier released.

27. This order is to take effect so soon as Sandilands Rehabilitation Centre signifies that they are able to adequately house Ms. Marshall. In the interim, Ms. Marshall is to continue to be housed at The Bahamas Department of Correctional Services for which, this shall constitute sufficient authority.

Dated this 12th day of December 2019



Bernard Turner  
Justice