

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE

3 INDICTMENT No. 79/2011
4

5 REGINA

6 v.

7 CHAKANE JAMEILE SCOTT
8



9 **Appearances:**

10 **Ms. Cheryll Richards Q.C. and Ms. Elisabeth**
11 **Less for the Crown**

12 **Ms. Sasha Wass Q.C. and Ms. Prathna Bodden**
13 **of Samson Law for the Defendant**
14

15 **Before:**

Justice Alexander Henderson Q.C.

16 **Hearing:**

17 **7TH April 2017**

18 **Delivery of Decision:**

19 **21st April 2017**
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22 **HEADNOTE**

23 *Criminal Law – Sentence – Mandatory life sentence – Minimum term –*
24 *Conditional Release – Firearm – Exceptional in nature – Aggravating*
25 *circumstance – Extenuating circumstance – Arbitrary and disproportionate*
26 *legitimate expectation of release.*
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29 **JUDGMENT**
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1 Immediately after the firing of the flare, Mr. Rankine heard a gunshot from where Mr.
2 Scott was standing. Mr. Rankine fled. As he did so, he turned around and saw Mr.
3 Scott chasing Mr. McGaw and heard two more shots. When Mr. Rankine turned
4 around again he saw Mr. McGaw fall to the ground and saw Mr. Scott fire a fourth
5 shot at him at close range. Mr. McGaw died from the effects of three gunshot wounds.

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7 4. Mr. Rankine's evidence constituted the main part of the case for the Crown. It was
8 supported and confirmed by some other, independent evidence. Mr. Scott made no
9 statement to the police and did not give evidence at trial. There was no suggestion in
10 the evidence and argument of a motive. Mr. Scott was 18 years and three and one-half
11 months old at the time.

12
13 *ISSUES*

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15 5. In its written submission, the Crown had argued that the use of a firearm is an
16 aggravating circumstance of an exceptional nature. At the hearing, the Crown
17 conceded that this position could not be maintained in light of my decision in *Ricketts*,
18 *supra*. The Crown has also argued that Mr. Scott threatened Mr. Rankine shortly after
19 the shooting in a manner that amounts to an aggravating circumstance of an
20 exceptional nature.

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22 6. The Defendant's written submission touches upon questions concerning characterizing
23 the Law as a retroactive increase in penalty (and therefore unconstitutional), a
24 legitimate expectation of release prior to the expiration of 30 years, and proportionality
25 of the 30-year norm for a minimum term. At the hearing, these points were not taken;
26 Ms. Wass argued only that the age of the Defendant was an extenuating circumstance
27 exceptional in nature.



DID THE DEFENDANT THREATEN MR. RANKINE?

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7. Threats and intimidation directed at a potential witness may amount to an aggravating circumstance. Schedule 12 of the Regulations lists in s.2(2)(e) “*the use of duress or threats against another person to facilitate the commission of the offence*” as an aggravating circumstance.
8. The Crown relies upon evidence given by Mr. Rankine that, a few hours after the shooting, Mr. Scott told him “don’t make nobody know about this” or “don’t make nobody know about it”. Mr. Rankine, who was already afraid of Mr. Scott, felt threatened by the conversation.
9. I have reviewed the evidence concerning this alleged threat and find I am not sure that what Mr. Scott said rises to the level of a threat as opposed to a direction or a peremptory order. There is nothing in the evidence that describes what action, if any, Mr. Scott would take if Mr. Rankine failed to obey. There is also a question about whether Mr. Scott said what he did “to facilitate the commission of the offence”, given that the murder had already been committed. I need not decide this latter point as the lack of a clear indication about the consequence of disobedience is fatal to the Crown’s position.
10. In the result, there are no aggravating circumstances to take into account.



1 *AGE*

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3 11. Mr. Scott was 18 years and three and one-half months old at the time he committed the
4 offence.

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6 12. Section 2(3)(g) says that “the age of the offender” may amount to an extenuating
7 circumstance exceptional in nature.

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9 13. The Crown has provided me with a helpful table listing the age at which each of the 22
10 men convicted of murder in the Cayman Islands committed his offence. The median
11 age is 25; the average is 27. In addition to Mr. Scott, there is one other offender who
12 committed murder at the age of 18. The next youngest offender was age 20 at the time
13 of the offence. These facts satisfy me that Mr. Scott’s young age is relatively unusual
14 or uncommon, and therefore exceptional in nature. As a consequence, I am able to
15 view his age as an extenuating circumstance.

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17 14. Age, in and of itself, is not strictly relevant to sentencing; rather, age is used, in the
18 case of young people, as an analogue for maturity, insight and understanding. In the
19 leading case of *R v Peters & others*², the UK Court of Appeal explained (at para. 11)
20 the generally accepted view in these words:



² EWCA Crim 605; [2005] 2 Cr. App. Rep. (S.) 101

1 *"It has long been understood that considerations of age and maturity are*
2 *usually relevant to the culpability of an offender and the seriousness of the*
3 *offence. Schedule 21 underlines this principle. Although the passage of an*
4 *eighteenth or twenty-first birthday represents a significant moment in the*
5 *life of each individual, it does not necessarily tell us very much about the*
6 *individual's true level of maturity, insight and understanding. These levels*
7 *are not postponed until nor suddenly accelerated by an eighteenth or*
8 *twenty-first birthday. Therefore although the normal starting point is*
9 *governed by the defendant's age, when assessing his culpability, the*
10 *sentencing judge should reflect on and make allowances, as appropriate*
11 *upwards or downwards, for the level of the offender's maturity. In two of*
12 *these appeals, the offender was aged 19 ½ when the offences were*
13 *committed. In the third, the offender was 18 years and 2 months. If the*
14 *murder which culminated in the death of someone precious to the third*
15 *offender had happened in the course of a dispute 3 months earlier, she*
16 *would not quite have reached 18 years. A rigid application of the starting*
17 *point in Schedule 21 would mean that the 3 months difference in age*
18 *should be reflected by a difference of 3 years in the sentence. Sentencing*
19 *decisions cannot be prescribed by such accidents of time. We can illustrate*
20 *this problem a little further by taking the all too familiar case of a group of*
21 *youths convicted of murder following an attack on a passer-by in the street*
22 *late at night. They may be 17, 19 and 21 years old. Normally the 21year*
23 *old would be likely to be the most mature. But there are cases where the*
24 *17year old, although the youngest, is in truth the leader of the group, and*
25 *the most violent of the three, and the most culpable, who triggered off the*
26 *attack and indeed inflicted the fatal blow. It may produce an unjust result*
27 *if on the basis of his age alone, the minimum term in his case were lower*
28 *than the sentence on his co-defendants. Therefore, in relation to offenders*
29 *aged up to 21 or even 22 years, the determination of the minimum term in*
30 *accordance with the legislative framework in Schedule 21 needs to be*
31 *approached with an acute sense of how inevitably imprecise the statutory*
32 *criteria may sometimes be to issues of culpability, and ultimately to*
33 *"seriousness" as envisaged in s 269 itself."*

- 34
- 35 15. In the case of two of the three offenders whose minimum term was under
36 consideration, the judgment says nothing about their actual level of maturity,
37 insight and understanding; that was inferred from their age and the
38 circumstances of the offence.



1 16. In *R. v Martin*³ the UK Court of Appeal reduced a minimum term on a murder
2 conviction by 2 years (from a starting point of 15 years to 13 years) in light of the
3 offender’s age. The offender was 18 years and 12 weeks old at the time of the offence.
4 He was described by counsel in argument as “slow thinking and, in that sense,
5 immature”. The Court accepted the assertion, and noted also that the Crown had
6 conceded that the offender’s intention had been not to kill but to cause serious bodily
7 harm. Aside from the quoted phrase, there is nothing in the judgment by which the
8 offender’s “true level of maturity, insight and understanding” (to quote *Peters, supra*)
9 might be judged except his age.

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11 17. In *R v De Silva*⁴ the UK Court of Appeal reduced a minimum term following a
12 conviction for a murder committed in the course of a burglary by two years (from a
13 starting point of 30 years to 28 years; the trial Judge had settled on 32 years). Although
14 the evidence included four opinions from psychiatrists who had examined the offender,
15 the Court’s brief discussion of the factor of age (at para. 10) was not specific to the
16 offender, who was 19 at the time of the offence. The Court said that:

17 “*young offenders are more likely to be impulsive, unthinking, and respond to*
18 *situations with excessive and gratuitous force*” (underlining added).



³ [2009] EWCA 1182; [2010] 1 Cr. App. Rep. (S.) 38

⁴ [2014] EWCA Crim 2616; [2015] 1 Cr. App. Rep. (S.) 52

1 18. In Mr. Scott's case, there is virtually nothing on the record (other than his age) from
2 which I might draw an inference about his level of maturity, insight and understanding
3 at the time of the offence. There is nothing from which I can infer a motive to kill.
4 Nevertheless, as the cases cited above demonstrate, it is reasonable to conclude from
5 his age alone that his level of maturity, insight and understanding was likely less than
6 that of a fully developed, mature adult. That is an extenuating circumstance that merits
7 some recognition. I consider that a reduction of two years from the norm is
8 appropriate.

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10 **ORDER**

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12 19. For these reasons, I fix the minimum term at 28 years. The 244 days Mr. Scott spent
13 while on remand are to be taken into account.



18 **Dated this the 21st April 2017**

19
20 *Henderson, J.*

21 **Justice Alexander Henderson Q.C.**
22 **Judge of the Grand Court**
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