

IN THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE
(CRIMINAL DIVISION)

CASE NO: ANUHCR2021/0026

BETWEEN:

THE QUEEN
and
AKEEM HENRY

Appearances:

Mrs. Shannon Jones-Gittens, Counsel for the Crown
Mr Wendell Robinson, Counsel for the Defendant

Before: The Honourable Mr Justice Colin Williams

2022: May 4th, 20th
June 10th

SENTENCING DECISION

- [1] **WILLIAMS, J.:** Mr. Akeem Henry at his arraignment on the 26th November, 2021 entered a plea of guilty to murder. The maximum penalty for non-capital murder in Antigua and Barbuda is life imprisonment. The sole issue to be determined is: what is the appropriate penalty to be imposed on Mr. Henry?
- [2] The **Offences Against the Person (Amendment) Act**, No: 13 of 2013 repeals and replaces section 2 of the principal **Act** (Cap. 300). It states:
- “Whosoever is convicted of murder shall be sentenced to death or to imprisonment for life or for such lesser term as the court considers appropriate.”

Brief History

- [3] On the 27th December, 2019, Keon Carr was shot and killed in Gray's Farm, St. Johns, Antigua.
- [4] From very early into the investigation of the shooting, Mr. Akeem Henry was a suspect. He was first detained by the police on or about the 31st December, 2019. Mr. Henry was however released from custody days afterwards. Mr. Henry was again detained on or about the 23rd April, 2020; while speaking with a senior police officer Mr. Henry admitted his culpability to the police. The Defendant was arrested and charged for the murder of Mr. Keon Carr.
- [5] Mr. Henry was committed to stand trial at the conclusion of the Preliminary Inquiry at the District A Magistrate's Court on the 21st October, 2020. The learned Director of Public Prosecutions, Mr. Anthony Armstrong indicted Mr. Henry for murder, contrary to the common law, on the 31st August, 2021.
- [6] Mr. Henry first appeared at the High Court on the 23rd September, 2021. He was represented by counsel, Mr. Wendell Robinson who requested a short adjournment to be properly briefed in the matter. On the adjourned date, 7th October, 2021 counsel, Mr. Robinson stated that the defence was minded to ask for a Sentence Indication and requested time so that the agreed facts could be placed before the Court. By the adjourned date, 12th November, 2021 no agreed facts were available. Mr. Robinson then stated that he wished a final adjournment as his client may rely on a report from the Superintendent of Prisons.
- [7] Mr. Henry was arraigned on the 26th November, 2021. An order was made for a Social Inquiry Report to be provided for the adjourned date of 25th January, 2022. There was some delay in obtaining the Social Inquiry Report. On the 25th January, 2022 only a Victim Impact Statement was received. The matter was therefore adjourned to the 8th April, 2022. No report was available on the adjourned date and another order was made for a full Social Inquiry Report to be provided on or before 25th April, 2022.
- [8] The sentencing hearing was held over two separate days in May 2022 (the 4th and the 20th). Mr. Robinson mitigated on behalf of Mr. Henry. Mrs. Shannon Jones-Gittens on behalf of the Crown led victim impact evidence from the mother of the deceased.

The Facts

- [9] Sometime after 7:00 pm on the 27th December, 2019 Keon Carr was among a group of men sitting outside Reggie's Bar on Christian Street, Gray's Farm. An assailant approached and shot Mr. Carr. Four of the projectiles caught Mr. Carr. One of the shots was fired at Mr. Carr while he was lying in a gutter that he had fallen into.
- [10] The assailant ran away from the scene with a small firearm in his hand.

- [11] Mr. Carr was taken to the hospital shortly after the shooting. However when Mr. Carr arrived at the hospital, he was found to be unresponsive and attempts to revive him failed. He was pronounced dead at 8:34 pm.
- [12] There were wounds to Mr. Carr's neck, back, right forearm and chest. The post mortem examination was done by Dr. Petra Miller-Nanton. The pathologist concluded that "death was due to gunshot wounds with penetrating lung injury and haemothorax, penetrating liver injury and intra-abdominal hemorrhage." Those injuries correspond to a gunshot injury that entered the "right upper back, penetrating to the right chest (third right intercostal space), with injury to the upper lobe of the right lung measuring 1.2 cm in diameter, through and through injury with exit at the base of the right lung 2 cm in diameter. This was associated with collapse of the right lung and right haemothorax. The bullet then travelled through the right crus of the diaphragm into the right lobe of the liver and exit [the] right lower lobe of [the] liver."
- [13] The surveillance footage retrieved from a nearby building showed Mr. Henry in the general area at 7:24 pm purchasing something to eat. He is seen four minutes later standing by the side of the building, with his body almost hidden, looking in the direction of Reggie's Bar. At 7:41 pm Mr. Henry moves from the building wearing an extra shirt and with a dark coloured cloth around his head. Two minutes later, Mr. Henry is seen running from the scene and the men who were previously gathered at Reggie's Bar were also seen scampering away.
- [14] On the 31st December, 2019 the police obtained a warrant to search Mr. Henry's home. Mr. Henry was arrested on suspicion of murder. When Mr. Henry was interviewed by the police, he did not provide any useful information. Mr. Henry was released from custody on the 3rd January, 2020.
- [15] On the 24th April, 2020 police obtained another warrant to search Mr. Henry's home. The police took possession of an item of clothing. Mr. Henry was once again arrested on suspicion of shooting Mr. Carr. Mr. Henry initially denied his involvement and explained that both he and the deceased sold 'weed' for the same person, so they were acquainted.
- [16] Later on the 24th April, 2020 a senior police officer told Mr. Henry that the police had sufficient evidence to charge him and that he, Mr. Henry, should tell the truth. Mr. Henry then, according to the agreed facts presented by the Crown, "broke down and confessed" to the commission of the offence. He further explained that he had thrown the gun that he used into the sea and was prepared to show the police where he had thrown the gun. Mr. Henry took the police to the Bay area where he said he threw the firearm, but it was not recovered.
- [17] Mr. Henry also indicated that he was prepared to give a video recording confession to the police.
- [18] In the video recorded interview that Mr. Henry gave to the police, he stated that on the night in question he went to purchase something to eat; a few minutes later he saw Mr. Carr who was standing by a house. According to Mr. Henry, Mr. Carr looked at him and smiled. Mr. Henry said that he ate his food and watched Mr. Carr from a short distance away. After that, he did what he had to do – that is, to kill Mr. Carr. Mr. Henry then ran and got rid of his clothes. Mr. Henry also explained

that the firearm used was a .25 mm with 9 rounds of ammunition and that he had found the gun three months earlier.

- [19] The police asked Mr Henry why he killed Mr Carr. Mr Henry said that Mr Carr was watching him for 5 to 10 minutes and that Mr Carr smiled. Mr Henry said that he interpreted that to mean that Mr Carr would have done him something. Mr Henry said he felt that Mr Carr was a dangerous man.
- [20] During the video recorded interview, Mr Henry apologized to the mother of the deceased.
- [21] At the time of the offence, Mr Henry was 26 years old. He had no previous convictions.

Newton Hearing

- [22] A 'Newton Hearing' – emanating from the case **R v Newton** [1983] Crim LR 198 – was conducted to resolve the factual dispute concerning two conversations the Crown alleged Mr. Henry had with Mr. Anson Farrell, also known as 'Ghost Man'. Mr. Henry completely denied having any conversation whatsoever with Ghost Man.
- [23] According to the Crown's narrative, the day before the shooting, that is, on the 26th December, 2019 Mr. Henry journeyed to Mr. Farrell's home at Five Islands and said he was going to "knock down Keon" because Mr. Carr took his (Mr. Henry's) weed and didn't want to pay. 'Knock down' is the colloquial expression for "to kill".
- [24] The Crown alleged that Mr. Henry showed a black .25 mm pistol and a magazine with 5 rounds of ammunition to Mr. Farrell. Mr. Farrell is said to have told Mr. Henry "don't kill Keon because the matter is not serious."
- [25] The Crown's narrative is that four days following the shooting of Mr. Carr, Mr. Henry again went to Mr. Farrell's home and explained that he killed Mr. Carr by firing four shots in the presence of several persons. Mr. Farrell testified that Mr. Henry asked him (Mr. Farrell) to hold the gun for him, but Mr. Farrell declined to do so and stated that he would give some thought to it and would get back to Mr. Henry.
- [26] Mr. Henry for his part said that while he knew where Ghost Man lived and that he, Mr. Henry, used to go there frequently at one time and smoke, he had not gone to Ghost Man's home since 2014. This was because he was detained by the police after Ghost Man was shot.
- [27] Mr. Henry explained: "In December 2019, we [himself and Mr. Farrell] weren't really friends, but [we] still talk, but not friends to link him like before."

Unconvincing Testimony

- [28] Mr. Farrell's testimony was not believed as being true, credible or reliable. His evidence was found to be illogical in parts, contrary to common sense and his general demeanour - particularly in cross examination - was dodgy.
- [29] According to Mr. Farrell, he was not only friends with Mr. Henry, but also he was a friend of the now-deceased Mr. Carr. Mr. Farrell said that the Defendant would come to his home and smoke and they would "have little conversation". Mr. Farrell said that the now deceased Mr. Carr would also come to his (Mr. Farrell's) home and smoke. Sometimes, if Mr. Carr asked for fish, he Mr. Farrell would give Mr. Carr fish.
- [30] Mr. Farrell was also familiar with the families of both men – their parents and siblings.
- [31] Mr. Farrell acknowledged in cross examination that he was friends with Police Officer Benta who was based at the Gray's Farm Police Station. Mr. Farrell said that he was an information source for the police officer.
- [32] Mr. Farrell's testimony that he knew the day before the shooting of Mr. Henry's intention and plan to kill his (Mr. Farrell's) friend – Mr. Carr - but he said and did nothing, is incredulous. He did not warn his friend of any imminent danger; he said nothing to the parents or siblings of either Mr. Carr or Mr. Henry about the Defendant's intended conduct. Mr. Farrell took no steps whatsoever to prevent the commission of the offence. Further, following the fatal shooting of his friend Mr. Carr, according to Mr. Farrell, the Defendant not only confessed to him about doing the shooting but would have brought the firearm used in the commission of the offence to his (Mr. Farrell's) house. Again, Mr. Farrell said and did nothing.
- [33] Mr. Farrell's silence must be considered along with his claim that he was at all times a source of information for the police as to what was happening in the area.
- [34] It was not until sometime in February 2020, roughly eight weeks after the shooting, that Mr. Farrell said anything to the police.
- [35] Further, it is noted that Mr. Farrell's statement to the police is dated the 26th February, 2020. It is also noted that it was not until the last week of April 2020 that the police obtained another search warrant to go to the Defendant's home. The very fact that the police for almost two months declined to act on the statement in which Mr. Farrell claimed that Mr. Henry spoke to him on at least two occasions about the killing of the deceased, speaks volumes as to the perception of the general unreliability of this witness.
- [36] It was also quite noticeable that when critical suggestions were being put to Mr. Farrell about his relationship with Mr. Carr's mother, he claimed that "me ain't know how fu answer." While the Crown sought to submit that the suggestions were beyond the witness's comprehension, the same witness readily responded with denials when it was put to him that he was telling lies on Mr. Henry.

- [37] Mr. Farrell's testimony was not convincing and fell short of making one feel sure that he was speaking the truth.

Sentencing Proceedings

- [38] The Social Inquiry Report which was obtained in this matter is in keeping with the provisions of the **Offences Against the Persons Act** (as amended).

- [39] The legislation provides that:

"Where an accused pleads guilty or is found guilty of an offence, a probation officer or a social welfare officer shall, if required to do so by the court, prepare and file with the court a report in writing relating to the convicted person for the purpose of assisting the court in imposing an appropriate sentence or determining when he should be discharged and on what conditions, if any."

Victim Impact Statement

- [40] A Victim Impact Statement was provided by the Family and Social Services Division. It was based on an interview conducted with Ms. Brenda Gillian Furlonge, the mother of the deceased, Mr. Keon Carr. Ms. Furlonge was also called by the Crown to give viva voce evidence at the sentencing hearing.
- [41] Ms. Furlonge said that since the death of her son, she relocated from Grays Farm. She testified to suffering with severe headaches, nightmares and elevated blood pressure. Her son's death has had a financial impact as he is survived by three children, two of whom live overseas with their mothers. Ms. Furlonge said that she did not have friends or anyone to speak with following the death of her son; however recently she was promised that she would be given access to a counsellor.
- [42] Ms. Furlonge said she really wanted to know why her son was killed.

Social Inquiry Report

- [43] The Senior Probation Officer, Mrs. Carolyn Cornelius Hector in the Social Inquiry Report said that: "Mr. Henry stated that the deceased, Keon Carr, consistently interfered with him. He explained that on numerous occasions, he [Keon Carr] would meet him and just take away his money, take away his phone or beat him up for no reason."
- [44] Mrs. Cornelius Hector in her report explained: "It was expressed that the community where both Akeem and Keon were brought up in, is hard and there is a tendency for the weak to easily succumb to the ills of the society that surround them." According to the Senior Probation Officer, one man "shared that the ghetto is where fights are used to settle the score and the stronger will survive."

[45] With reference to the interview with the Defendant, the report goes on to say:

“Mr. Henry stated that he knows he is wrong and that he wishes to apologise for what he did. He says he understands that there must be a consequence but he is asking for some mercy.”

[46] On the subject of leniency, Mrs. Cornelius Hector in the penultimate paragraph of her report stated: “The community and his family are asking for leniency in regards to his judgment because he is still very young.”

Sentencing Guidelines

[47] The calculation of the sentence to be imposed on the Defendant is governed by the **Eastern Caribbean Supreme Court Sentencing Guidelines**. The current ‘Sentencing for the Offence of Murder’ is covered in Practice Direction No: 3 of 2021, which was re-issued on 26th November, 2021.

[48] The first consideration is to determine into which category Mr. Henry falls? There are four categories:

- a. Sentence of death;
- b. A whole life sentence;
- c. A determinate sentence; and
- d. Detention at the court’s pleasure.

[49] It is apparent that this case falls squarely in category c - a determinate sentence. This is because none of the factors which trigger a sentence of death are present. Similarly, none of the fifteen factors which would place the seriousness of the offence as exceptionally high and which would require a whole life sentence are present. And “detention at the court’s pleasure” is reserved for situations where the offender has been found to be insane or suffering from relevant mental illness.

[50] According to the Guidelines, for a determinate sentence “the appropriate starting point is 40 years, within a range of 30 – 50 years.” There is no apparent need to depart from the general starting point of 40 years.

Adjustment to Starting Point

[51] The next step is to make adjustments for aggravating and mitigating factors with regard to the offence itself.

[52] In terms of aggravating factors: It appears as though there was a degree of planning, even if it was not significant or prolonged, based on the fact that Mr. Henry seemed to have waited for Mr. Carr to turn up at Reggie’s Bar and he was seen on video footage to be wearing an extra shirt and had

something covering his head. It could also be said that the offence involved some risk of death to other persons, even though minimal, because of where the shooting of Mr. Carr occurred.

- [53] In terms of mitigating factors: It is clear that but for the Defendant's admission, the matter would have remained unsolved. There was information and a strand of circumstantial evidence which pointed to the Defendant as the person that committed the offence. But there was no solid evidence independent of the Defendant to ground a conviction. After months of the offence being unsolved, Mr. Henry admitted his role and offered to assist the police to recover the weapon used. The assistance that Mr. Henry provided in solving the matter is significant.
- [54] The mitigating factors with regard to the offence exceed the aggravating factors. The Defendant is accordingly given credit of two years for that.
- [55] As far as the Defendant is concerned, he has no previous convictions for violence; no relevant convictions for other offences; the offence was not committed while he was on bail. Those are aggravating factors which, if present, would be reasons to increase the sentence.
- [56] Mr. Henry was of previous good character; he reportedly expressed remorse in his interview with the police during which he apologised to the deceased's mother. He also sought to apologise through the Senior Probation Officer. The mother of the deceased during the sentencing hearing although pleading for an answer as to why her son was shot and killed, repeated that she has forgiven the Defendant for what he did. The Social Inquiry Report spoke favourably of Mr. Henry. It appears that Mr. Henry has good prospects for rehabilitation. The Senior Probation officer, Mrs. Cornelius Hector in her closing assessment stated:

"Akeem was described by most as being very quiet and humble, a man with few words. Members of the community spoke about Akeem in a positive manner highlighting the fact that he was manners-able and not the aggressive type. It was also highlighted that he has been a victim of his environment."

- [57] As far as the factors pertaining to Mr. Henry are concerned, there are only mitigating factors. He is accordingly given credit of a further two years.

Early Guilty Plea

- [58] Mr. Henry has to be given credit for his early guilty plea. It cannot be doubted that upon the first occasion that the charge was read to Mr. Henry, that he entered a plea of guilty. He is accordingly entitled to a full one-third discount.
- [59] Having commenced with a starting point of 40 years, then subtracting 2 years each for the mitigating factors in relation to the offence and mitigating factors in relation to the Defendant exceeding the aggravating factors, they carry the figure down to 36 years. The one-third credit for the early guilty plea means that 12 years have to be subtracted from the 36 years, leaving 24 years.

[60] There is one final consideration. The time spent on remand has to be accounted for. This has to be done with precision. Accordingly, the sentence will run from the date of Mr. Henry's remand to prison in April 2020 following his arrest and charge for the offence.

Sentence

[61] Mr. Akeem Henry, for the offence of murder of Mr. Keon Carr on the 27th of December, 2019 at Gray's Farm, in Antigua to which you have pleaded guilty, your sentence is 24 years imprisonment from the date of your remand.

Colin Williams
High Court Judge

By the Court

Registrar