**[2013] JMCA Crim 17**

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CRIMINAL APPEAL NO 55/2011**

**BEFORE: THE HON MR JUSTICE MORRISON JA**
**THE HON MR JUSTICE DUKHARAN JA**
**THE HON MRS JUSTICE McINTOSH JA**

**ANDRAE BRADFORD v R**

**Robert Fletcher for the applicant**

**Miss Maxine Jackson and Mrs Tracey-Ann Robinson for the Crown**

**18 February and 22 March 2013**

**MORRISON JA**

[1] On 3 June 2011, the applicant pleaded guilty to three counts of manslaughter in the Manchester Circuit Court. On 10 June 2011, the learned trial judge, Glen Brown J, sentenced the applicant to imprisonment for life on each count and stipulated that he should serve a minimum of 25 years in prison before becoming eligible for parole. The judge also ordered that a psychiatric evaluation of the applicant should be done.

[2] The applicant applied for leave to appeal against sentence and this application was considered on paper and refused by a single judge of this court on 26 September 2012. The applicant therefore renewed his application before us on 18 February 2013, when the court made the following order:

> "Application for leave to appeal against sentence is granted. The hearing of the application is treated as the hearing of the appeal, which is allowed. The matter is remitted to the Supreme Court for re-sentencing and the re-sentencing process is to be informed by a comprehensive psychiatric evaluation of the applicant."

[3] Before stating the court's reasons for making this order, a brief indication of how the matter arises may be helpful. The applicant, who had no previous convictions, was charged with the murder of three women, each on a separate occasion, in December 2006, December 2007 and June 2008, respectively. The body of each of the deceased women was found abandoned and suffering from several stab wounds. The evidence against the applicant in respect of each woman consisted primarily of a statement under caution in which he admitted that he was responsible for her death.

[4] When the matter came on for sentencing on 10 June 2011, counsel who then appeared for the applicant offered the following by way of mitigation:

> "M'Lord, often the Court has this heavy burden of sentence. Sometimes Counsel also have a heavy burden. In this particular matter you are also concerned about how these things have occurred so that we ask for a psychiatric evaluation.
>
> What normally happens is that they will rule on whether he is fit to plea, in my humble view, and as the Court alluded to earlier, in this particular case that is inadequate because the nature of those acts suggest [sic] that there is some psychological imbalance, there is some issue mentally."

[5] In passing sentence on the applicant, the learned judge said this:

> "HIS LORDSHIP: Mr Bradford, stand up. You have pleaded guilty to three Counts of Manslaughter. The allegations as

> outlined that there are three separate incidents. My only conclusion is that you are a psychopath. That something is wrong with your mind. Not to the extent that you are insane, but there is something wrong someplace. I cannot understand how you can just treat the females in that manner. I certainly can't understand, and the only thing that maybe that you are suited is to be among males alone because you don't appreciate women, otherwise you would not deal with them like that.
>
> I am convinced that you are not normal, and therefore I am going to recommend from the inception that a psychiatric evaluation is done and that you get psychiatric treatment throughout the period of incarceration, and what you should consider yourself fortunate is that when one commits two murders, if you are charged and convicted for murder it is the death sentence, notwithstanding the fact that the Judicial Committee of the Privy Council won't allow us to carry it out.
>
> The sentence of this Court is that on each Count, Life Imprisonment. You are to serve a minimum of 25 years before you can be considered for parole, and that also that a psychiatric report evaluation [sic] be done".

[6] Before us, the applicant was represented by Mr Robert Fletcher, to whom the court wishes to record its appreciation and gratitude for his assistance, at very short notice, in this matter. Mr Fletcher sought and was given permission to argue two supplemental grounds of appeal, in which it was contended that the sentences were manifestly excessive, in that the learned trial judge had (i) "omitted to request a psychiatric evaluation which would provide relevant information on the mental status of the applicant raised and recognized by him as a cogent issue on the matter"; and (ii) "failed to indicate which basis or applied the wrong basis for departing from the range of sentences for similar offences".

[7] As it turned out, it was only necessary for the court to consider ground (i). In his skeleton arguments in support of this ground, Mr Fletcher submitted that the judge, who had clearly been aware of the issue and the relevance of the applicant's mental condition, erred in failing to obtain and take into account necessary information which "must have been critical to arriving at an appropriate sentence – placing the requirement for it post sentence rather than before". It was accordingly submitted that the sentence should be set aside and the matter remitted to the court below for re-sentencing in the light of the results of the appropriate psychiatric investigations.

[8] In a very helpful submission, for which the court would also wish to record its gratitude (not least of all for its salutary example of proper prosecutorial conduct), Miss Maxine Jackson for the Crown conceded that the wrong procedure had been adopted by the judge after the guilty plea was accepted.

[9] Miss Jackson drew our attention to the decision of this court in ***R v Valerie Witter*** (SCCA No 53/1973, judgment delivered 20 December 1973), in which, a plea of guilty to manslaughter having been accepted by the trial judge, the applicant was sentenced to imprisonment for life with a recommendation for psychiatric treatment. However, in that case, in which there was in fact a psychiatric report on the applicant's condition in existence, the Court of Appeal was able to resort to the expedient of itself asking the doctor who had examined the applicant for the purpose of preparing that report, to attend before it and give evidence as to his mental condition. By that means, the court was able to satisfy itself that the sentence passed by the trial judge was the

appropriate one in all the circumstances and the application for leave to appeal against sentence was accordingly refused.

[10] However, delivering the judgment of the court, Henriques P observed (at page 4) that -

> "...it is of vital importance that medical evidence should be taken so that the trial court can be in a position to ascertain what sentence it should impose and also that this court should be equipped with the necessary material to determine whether in all the circumstances the sentence passed by the learned trial judge was or was not an appropriate one."

(See also ***R v Denzil Crooks*****,** SCCA No 153/1973, judgment delivered 1 May 1974, a case on similar facts, in which the court expressed the hope that "the procedure laid down in **Valerie Witter** in dealing with matters of this sort, will at all times in the future be observed by trial judges".)

[11] The rationale for the procedure laid down in ***R v Valerie Witter*** is not far to seek. In seeking to give effect to the well known factors of retribution, deterrence, prevention and rehabilitation (as to which, see ***R v Sydney Beckford & David Lewis*** (1980) 17 JLR 202; 203-204, where they are described as "the four classical principles"), the sentencing judge must take into consideration, among other things, "the character and antecedents of the individual who stands before him" (per Henriques P in ***R v Errol Campbell*** (1974) 12 JLR 1317, 1318; see also ***Everol Malcolm v R*** [2012] JMCA Crim 63, at para. [17]). It seems to us that, in cases of suspected

psychiatric illness or impairment, this requirement assumes particular significance, for the reasons given in a leading Australian text on sentencing ('Australian Sentencing: Principles and Practice', by Richard Edney and Mirko Bagaric, Cambridge University Press, 2007, page 164):

> "An offender who appears for sentences and who is suffering from a psychiatric or psychological illness falling short of insanity at the time of the offence, or at the time of sentencing, may have this illness treated as a mitigating factor in sentencing. The basic policy reason underpinning psychiatric or psychological illness as a mitigating factor pivots on the idea that a person suffering from such an illness has a lesser moral culpability than those who are not suffering from this incapacity. It is also underpinned by the notion that persons should only be punished in accordance with their level of moral culpability. Importantly, those suffering from a psychiatric or psychological illness depart from the rational, deliberative agent that is the fundamental standard of criminal responsibility for the purpose of punishment. Where persons suffering from a psychiatric or psychological illness have a reduced capacity to choose and order their conduct then their capacity for full moral reasoning and judgment is impaired and this should be reflected in the sentencing of this cohort of offenders."

[12] So it was plainly necessary in the instant case, in our view, to take the applicant's psychiatric status into account as a potentially mitigating factor. The learned trial judge ordered a psychiatric evaluation of the applicant after he had already passed sentence on the applicant, and not before, as he was required to do in order for him to be able to determine the sentence that was appropriate to the applicant's particular circumstances. It is for this reason that the court made the order set out at paragraph [2] above. As a result of our conclusion on ground (i), which was clearly

determinative of the application for leave to appeal and the appeal, it was not necessary for us to go on to consider ground (ii).