**[2023] JMCA Crim 56**

**JAMAICA**

**IN THE COURT OF APPEAL**

**BEFORE: THE HON MISS JUSTICE P WILLIAMS JA**
**THE HON MRS JUSTICE FOSTER-PUSEY JA**
**THE HON MISS JUSTICE SIMMONS JA**

**SUPREME COURT CRIMINAL APPEAL NO COA2020CR00018**

**VANESSA CAMERON v R**

**Atiba Dyer for the applicant**

**Miss Ashtelle Steele and Miss Sharelle Smith for the Crown**

**5 May 2023 and 1 December 2023**

**Criminal Law – Sentence – Murder – Whether sentence was manifestly excessive – Whether to impose a sentence of imprisonment for life or a fixed term**

**P WILLIAMS JA**

[1] It is unclear what sparked a dispute between Miss Vanessa Cameron ('the applicant') and a woman called "Michelle", who is a friend of Miss Tka James ('the deceased'). However, this dispute culminated in the applicant stabbing the deceased with a knife, ultimately resulting in the deceased's death. The applicant was tried and convicted for murder in the Home Circuit Court, before Shelly-Williams J ('the learned trial judge') and a jury. She was sentenced to life imprisonment with eligibility for parole after serving 19 years and 10 months.

[2] The applicant sought leave to appeal her conviction and sentence, which was refused by a single judge of this court. As is her right, she renewed that application before

us. At the commencement of the hearing of her appeal, the applicant's counsel, Mr Atiba Dyer ('Mr Dyer'), indicated that there were no grounds of appeal that he could usefully advance challenging the applicant's conviction and sentence. However, in response to an enquiry from the court, he changed his stance and took issue with the sentence of life imprisonment imposed. He stated that it was manifestly excessive and urged this court to consider imposing a sentence of a fixed term of years. Accordingly, the sole issue for determination in this appeal is whether the sentence imposed on the applicant was manifestly excessive in all the circumstances.

**Background facts**

[3] The Crown's only witness of fact, Miss Kemisha Blake ('Miss Blake'), testified that on 9 October 2013, at about 8:15 am, upon leaving her son at the Seaview Gardens Primary School, in Seaview Gardens in the parish of Kingston, she saw the deceased and three other females: "Michelle", "Dimple" and another female whose name she did not know. Miss Blake spoke to the deceased and based on what she was told, Miss Blake decided to walk behind them, heading towards Nitty Gritty in Seaview Gardens. Miss Blake followed the women "to see what was going to take place".

[4] When she reached the front of the Seaview Gardens scheme, she saw "Michelle up facing [the applicant]". Miss Blake knew the applicant as "Tashoy". She saw them arguing, but she did not know what the argument was about. The deceased and the other women were also present. Michelle and the applicant were "face to face". Michelle had a picket fence board in her hand, and "[s]he was up in [the applicant's] face with the board". The applicant then took up a stone from the ground and held it as if she intended to hit Michelle. However, the deceased "came from behind", used her hand to "box the stone out of [the applicant's] hand", and said, "You can't lick mi friend with that". The applicant replied to the deceased, "Come out of this. Ah nuh your war". Michelle said, "Mi nah go a prison fi you this morning", and walked away with the deceased and the other women towards Nitty Gritty. Miss Blake left the applicant standing there and walked towards Nitty Gritty.

[5] About 10 minutes after entering Nitty Gritty, Miss Blake saw the applicant crying with a knife in her hand. From Miss Blake's demonstration, the knife was estimated to be 11 inches in length. The applicant asked Miss Blake, "You see where the girl turn and go". Miss Blake replied, "No". The applicant said, "Eeh, Eeh, it naw go so", and walked towards Falcon, Seaview Gardens. Miss Blake ran behind the applicant wanting "to see what was going to take place", and followed the applicant through an open lot until she entered into Falcon. Miss Blake saw the deceased and the three other women there.

[6] Upon entering Falcon, the applicant chased the women with the knife in her hand. Michelle, Dimple and the other female ran, leaving the deceased behind. The deceased stopped. The applicant also stopped and faced the deceased with the knife in her hand and began "stabbing after [the deceased]". The deceased "was back backing away" from the applicant while still facing the applicant. The deceased had her phone in her hand and held up her hands, "preventing herself from getting cut with the knife", "[l]ike she was protecting herself". The deceased did nothing to the applicant when the applicant approached her with the knife. The deceased then fell to the ground. The applicant "went over [the deceased] with the knife" and stabbed [the deceased] in the groin area and "ease up back". The deceased did nothing to the applicant while on the ground. The applicant ran "away from the scene".

[7] Miss Blake ran to the deceased while she was on the ground and spoke to her. The deceased responded. The deceased tried to get up but fell back to the ground. The deceased threw away the phone she had in her hand. Miss Blake noticed that the deceased was bleeding from the groin area. Immediately thereafter, Miss Blake accompanied the deceased on a bus to the Kingston Public Hospital, where the deceased eventually succumbed to her injuries.

[8] Under cross-examination, Miss Blake admitted that Michelle was in the applicant's face and "draped her up" and that the applicant, in turn, "draped [Michelle] back". She said, "[D]em collar up each other". She denied suggestions that the applicant "draped up" the deceased or that there was a struggle between them. She also rejected

suggestions that the deceased had reached for a knife in her waist; there was a struggle between the applicant and the deceased for this knife; that the applicant received a cut on her shoulder; and that the applicant stabbed the deceased while they were struggling for the knife. She also denied a suggestion that the three other women were "circling around" the applicant during the struggle between the applicant and deceased "in a menacing way". Miss Blake maintained that the women ran away after being chased by the applicant.

[9] On 6 February 2014, the applicant was arrested by Corporal Nasita Thorpe-Edwards along Hope Road, near to Half-Way-Tree. She was taken to the Hunts Bay Police Station. On 10 February 2014, Detective Constable Craig Grossett, who had been assigned to investigate the matter, charged the applicant with the offence of murder. She said nothing when cautioned.

[10] The post-mortem examination report revealed that the deceased had three wounds: incised wound to the right anterior upper arm; stab wound to the left upper anterior thigh on the groin; and incised wound on the chin. The wound to the groin was 9 to 11 centimetres in depth and had severed the left femoral vein, left internal iliac vein and artery and ended at pelvic inlet. The cause of death was listed as haemorrhage, shock, and stab wound to the thigh.

[11] The applicant gave sworn testimony. She stated that on the date of the incident, she was taking her then two-year-old daughter to school when she saw a group of ladies blocking the sidewalk. She said, "Excuse", but "No one looked at [her], and no one answered". She said, "Excuse" again, loudly, and Michelle "cuss a bad word after [her] and said, weh mi a frighten har fah". The applicant replied, "Yuh stand up ina di road like the road a yours". Michelle started to curse more bad words, and her friends joined in. An argument developed, and "they start to come up in [her] face". At that time, she had her daughter in her hand. She placed her daughter down, but then a passer-by called to the ladies telling them to stop. He told her to take up her daughter and carry her to school. She then picked up her daughter and walked off.

[12] Upon leaving her daughter's school, she saw the women again. This time there were more than the four to five women she had seen before; it was now "whole heap more". The deceased who "wasn't there when time [they were] cussing", was present at that time. When the applicant saw the ladies, she picked up a stone. Michelle waked up to her and hit her. As she raised the stone, the deceased grabbed her "hair back … in [her] hair", "from behind", and "kicked" the stone from her hand. The applicant then turned around, facing the deceased and draped her up. The deceased's friends were hitting her. The deceased then reached into her waist and took out a knife. The applicant got hold of the knife and started wrestling with the deceased. The other people were still hitting her. The applicant said that she received a cut on the back of her left hand that bled and not on her shoulder, as was suggested by her counsel to Miss Blake. She continued to wrestle. Then she said:

> "… [The deceased] realize mi a get a hold a di knife, she start to ease mi off wid di knife. [The deceased] a push inna mi hand and a ease mi off. Den mi grab on to har, when mi hold di knife good, mi grab on to har and the knife stab har and draw back out di knife.
>
> Den everybody stop lick mi when dem si seh di knife have on blood den she stand up a look on me and she drop on har bottom."

[13] After the deceased fell on her bottom, the applicant said the deceased "grabbed onto [her] pants foot". The applicant saw a group of men approaching her with stones, so she ran to a bus stop and took a taxi to her aunt. She said she hid from the community because she knew the deceased's father was a don and she was "fraid at the time when it happened". The applicant denied that Miss Blake was present that day and denied Miss Blake's version of events. She insisted that there had been only one incident between herself and the ladies and it had taken place near to the school and not at Falcon.

[14] The applicant was subsequently asked specifically what the deceased was doing when she disarmed her of the knife. She said "[the deceased] was like she a brace me [the applicant] off and I [the applicant] grab onto her". She explained that the other

ladies were still licking her so she "was in a rage" and she was "just thinking of defending [herself] at the time".

[15] Under cross-examination, the applicant agreed that the deceased did not have a knife when she stabbed the deceased. She also admitted that she was "in a rage" when she got the knife. She maintained that she was defending herself but could not say why she was defending herself from the deceased. She agreed that the deceased had nothing in her hands at the time she stabbed her, and that the deceased was "pushing [her] off". She admitted that, on 10 February 2014, she gave a statement to the police but she never told them that she got a cut on her hand. She said that even though the deceased's friends were hitting her all over her body with "a good size board", "a good size tree stump" and stones, she could still get the knife. She said she was not "penetrating" the people who were hitting her; she was only "penetrating" the deceased. She denied that any "collaring up" took place between her and Michelle, which was contrary to a suggestion made by her counsel to Miss Blake. She indicated that she had only stabbed the deceased once, but in a statement to the police, she indicated that she stabbed her twice. Although in examination-in-chief she had explained that her need to hide from the community after the incident happened was out of fear because the deceased's father was a don, she admitted that up to the time she gave the statement to the police, she did not know that to be so.

[16] As indicated, the applicant was, thereafter, convicted of murder by the jury and sentenced to life imprisonment with eligibility for parole after serving 19 years and 10 months.

**The appeal**

[17] This appeal challenges the sentence imposed on the applicant. The sole ground of appeal is that "[t]he sentence is manifestly excessive".

[18] Mr Dyer contends that the learned trial judge erred when she considered the statutory maximum of life imprisonment as the only suitable sentence that could be

imposed on the applicant. He said that pursuant to section 3(1)(b) of the Offences Against the Person Act ('OAPA'), under which the applicant's case falls, the applicant would have been subject to a sentence of imprisonment for life or such other term as the court considers appropriate not being less than 15 years. Based on the Sentencing Guidelines for Use by Judges of the Supreme Court of Jamaica and the Parish Courts, December 2017 ('the Sentencing Guidelines'), he indicated that the range of sentences for murder, in these circumstances, is 15 years to life imprisonment. He, therefore, contended that the learned trial judge had imposed the statutory maximum for this offence without indicating a reason for so doing, contrary to the dictum of Brooks P in **Devon Ricketts v R** [2021] JMCA Crim 20. This error, he said, resulted in a sentence that was manifestly excessive.

[19] Miss Ashtelle Steele ('Ms Steele') for the Crown conceded that the learned trial judge erred when she concluded that the only option open to her, pursuant to section 3(1C) of the OAPA, was a sentence of life imprisonment. She accepted that, by so doing, the learned trial judge would not have considered all the sentencing options available to her. Nonetheless, Miss Steele argued that after considering all the factors outlined in **Meisha Clement v R** [2016] JMCA Crim 26 and the sentencing options specified in Sentencing Guidelines, one could not say that the sentence imposed on the applicant was manifestly excessive. She embarked upon a comparative analysis of sentences imposed for murder, in similar circumstances, to show that the sentence imposed was well within the usual range (see **OP v R** [2022] JMCA Crim 19; **Marlon Campbell v R** [2023] JMCA Crim 9; **Bernard Ballentyne v R** [2017] JMCA Crim 23; and **Quacie Hart v R** [2022] JMCA Crim 70).

[20] In the comparative analysis, Miss Steele referred to **Timothy Smith v R** [2022] JMCA Crim 40. In that case, the circumstances of the murder resulting from stab wounds were similarly egregious, but the sentence imposed was 20 years imprisonment at hard labour with the stipulation that the appellant ought to serve 15 before being eligible for parole. She noted that this case was different from all the other cases she had considered,

but indicated that it might assist in our consideration of the appropriate sentence to be imposed. Mr Dyer asked the court to align the applicant's sentence with that imposed in **Timothy Smith v R**, as he contended that the circumstances, in that case, were more egregious, but a lesser sentence was imposed.

**Discussion and analysis**

[21] In sentencing the applicant, the learned trial judge summarised the facts. She indicated that she had regard to the Sentencing Guidelines, case law and section 3(1C) of the OAPA. She stated she notes "that Section 3(1C) … since it is a murder case it indicates that it should be a sentence of imprisonment for life, but a term, a period should be indicated before the possibility of parole". She further said that "[t]he Sentencing Guidelines mirrors somewhat the [OAPA] … with a sentence of life imprisonment for which the Court should indicate a minimum period before the possibility of parole".

[22] In considering the sentencing range, the learned trial judge had regard to **Janet Douglas v R** [2018] JMCA Crim 7. She summarised the facts of that case and noted that, in that case, a sentence of life imprisonment was imposed with eligibility for parole after 31 years, which was reduced, on appeal, to 20 years, on account of the 11 years the appellant had spent on pre-trial remand. The learned trial judge, however, indicated that since the murder, in this case, was not premeditated, her starting point would have been considerably less.

[23] The aggravating features identified by the learned trial judge were the fact that the applicant was armed with a knife; she pursued and corned the deceased who tried to run away; she inflicted three stab wounds to the deceased- one of which was fatal; and the prevalence of these kinds of offences. She accepted the mitigating circumstances outlined in the plea in mitigation and the applicant's "good social enquiry report". She also considered the fact that the applicant would have spent one month and some days in custody, which she rounded up, in the applicant's favour, to two months.

[24] The learned trial judge then said:

> "As per section [3(1C)] of the [OAPA] you are going to be sentenced to life. In considering the issue of the possibility of parole, my starting point is 20 years. Due to the aggravating circumstances, I will increase the sentence by 4 years. I deduct 2 years for a positive Social Enquiry Report. I will also reduce it by 2 years for no previous conviction. I will reduce it also by 2 months for the time spent in custody. So you get 19 years and 10 months before the possibility of parole. So your sentence is life imprisonment; 19 years, 10 months before the possibility of parole."

[25] The standard of review in appeals against sentence which has been consistently followed by this court is in keeping with the principle formulated in **R v Kenneth John Ball** (1951) 35 Cr App Rep 164. At page 165 Hilbery J said, that:

> "**In the first place, this Court does not alter a sentence which is the subject of an appeal merely because the members of the Court might have passed a different sentence.** The trial Judge has seen the prisoner and heard his history and any witnesses to character he may have chosen to call. **It is only when a sentence appears to err in principle that this Court will alter it. If a sentence is excessive or inadequate to such an extent as to satisfy this Court that when it was passed there was a failure to apply the right principles, then the Court will intervene.**" (Emphasis added)

[26] Morrison P in **Meisha Clement v R**, at para. [43], also gave helpful guidance in this respect when he said:

> "On an appeal against sentence, … this court's concern is to determine whether the sentence imposed by the judge (i) was arrived at by applying the usual, known and accepted principles of sentencing; and (ii) falls within the range of sentences which (a) the court is empowered to give for the particular offence, and (b) is usually given for like offences in like circumstances. Once this court determines that the sentence satisfies these criteria, it will be loath to interfere with the sentencing judge's exercise of his or her discretion."

[27] In his usual succinct style, Brooks P in **Wayne Lewis v R** [2021] JMCA Crim 3, at para. [13], aptly directed that:

> "… **this court will not overturn the sentence unless it finds that it is not one that no reasonable judge could have arrived at in the circumstances**." (Emphasis added)

[28] Accordingly, for this court to interfere with the sentence imposed on the applicant, it must be satisfied that the learned trial judge erred in conducting the sentencing exercise, and arrived at a sentence that was manifestly excessive in all the circumstances.

[29] The learned trial judge indicated that she took note of section 3(1C) of the OAPA. She did not expressly recognise that section 2(2) of the OAPA provides that a person who commits murder in these circumstances is to be sentenced in accordance with section 3(1)(b) of the OAPA. It is, therefore, section 3(1)(b) of the OAPA that stipulates the sentence for murder in these circumstances. Section 3(1)(b) of the OAPA provides that persons convicted of murder falling within section 2(2) "shall be sentenced to imprisonment for life or such other term as the court considers appropriate, not being less than fifteen years".

[30] Section 3(1C) of the OAPA, on which the learned trial judge relied, specifies the pre-parole period where a sentence of life imprisonment or a fixed term of years is imposed for murder. Section 3(1C)(b) applies to the instant case. It provides that where a person is sentenced for murder pursuant to section 3(1)(b) and a sentence of life imprisonment is imposed, the minimum pre-parole period is 15 years (see section 3(1C)(b)(i)), but if a term of years was imposed, the minimum pre-parole period should not be less than 10 years (see section 3(1C)(b)(ii)). Consequently, in the light of these provisions, we agree with counsel that the learned trial judge would have also erred in sentencing the applicant on the belief that the only sentence that could be imposed on the applicant for murder, in these circumstances, is life imprisonment. This was an error in principle, which warranted this court's intervention.

[31] This court must now conduct its own assessment in determining whether the sentence imposed was manifestly excessive. In deciding the appropriate sentence to be

imposed, regard will be given to the relevant principles outlined in **Meisha Clement v R** and **Daniel Roulston v R** [2018] JMCA Crim 20.

[32] As indicated, pursuant to section 3(1)(b) of the OAPA, a person convicted of murder, in these circumstances, is subject to a sentence of life imprisonment or a term of years not being less than 15 years. The Sentencing Guidelines state that the normal range for murder is 15 years to life imprisonment. We would utilise that sentencing range in the instant case.

[33] In considering whether to impose a life sentence or a term of years, regard must be had to the circumstances of the case. The applicant and the deceased had no altercation. In fact, any real dispute that existed was between the applicant and a friend of the deceased. On the Crown's case, after the women had walked away from the dispute, the applicant also left and returned 10 minutes later, having armed herself with a knife, and enquiring about the whereabouts of the women at the earlier altercation. She searched for them until she found them. Even after the women ran, she pursued them. However, the deceased stopped. The applicant also stopped, faced the deceased and stabbed her, as she was "back backing away" and even when she had fallen to the ground. All the deceased had in her hands was a telephone. In these circumstances, the attack on the deceased was clearly in the nature of revenge for what had taken place sometime earlier, and could have been avoided if the applicant had chosen not to pursue the women who had walked away after that initial confrontation.

[34] Mr Dyer relied on **Timothy Smith v R** to bolster his argument that the sentence of life imprisonment was disproportionate. We, therefore, undertook our own comparative analysis of cases with similar facts and circumstances, as seen in the table below:

| Case Name | Circumstances | Sentence Imposed |
|---|---|---|
| **Neville Robinson v R** [2013] JMCA Crim 15 | The appellant killed his rival in love by inflicting, among other injuries, three stab wounds to the | Life imprisonment imposed with eligibility for parole after serving 20 years. |

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| | face and 21 stab wounds to the chest. | |
| **Bernard Ballentyne v R** | The applicant used a knife to inflict 12 wounds on the deceased, his ex-girlfriend. | Life imprisonment imposed with eligibility for parole after serving 20 years. Sentence affirmed on appeal. |
| **Janet Douglas v R** | The appellant, who was having an affair with the deceased's husband, lured her away from her home and inflicted 18 stab wounds to her upper body. | Life imprisonment with a stipulation that she should serve 31 years before parole. That pre-parole period was eventually reduced to 20 years on account of 11 years spent on pre-trial remand. |
| **Ryan McLean, Richard Gordon and Christopher Counsel v R** [2021] JMCA Crim 21 | The men chased the deceased and inflicted multiple stab wounds to his chest. | McLean and Gordon were sentenced to life imprisonment, with McLean being eligible for parole after serving 21 years and Gordon after serving 18 years. Counsel was sentenced to 18 years imprisonment with a stipulation that he ought to serve 10 years before becoming eligible for parole on account of a guilty plea. This court indicated that a determinate sentence would not have been suitable for McLean and Gordon, in that case, as it "was a most heinous crime". |
| **OP v R** | The applicant, who was then 13 years old, stabbed the deceased in the chest after an altercation over a bicycle. | Life imprisonment with eligibility for parole after serving 15 years. |
| **Timothy Smith v R** | The appellant stabbed the deceased (his ex-girlfriend) in the chest and right arm. The deceased ran away, and when she got to her door, he kicked away her | He was sentenced to 20 years imprisonment at hard labour with eligibility for parole after serving 15 years. He sought a remedy on account of his claim of a breach of his constitutional right due to pre- |

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| | foot, causing her to fall and proceeded to stab her in the back and run away. | and post-trial delay. The court found that there was no evidence before the court supporting this alleged breach and that, in any event, the delay was not inordinate. His appeal against the sentence was therefore dismissed. |
| **Quacie Hart v R** | Single stab wound to the chest. | He was sentenced to life imprisonment with eligibility for parole after serving 31 years. This court retained the sentence of life imprisonment but reduced the period before becoming eligible for parole to 20 years because the appellant pleaded guilty and so his sentence should have been considered pursuant to section 42F of the Criminal Justice (Administration) (Amendment) Act, 2015. |
| **Marlon Campbell v R** | After an altercation, the appellant stabbed the deceased with a knife and ran. | Life imprisonment with eligibility for parole after serving 20 years. |

[35] It is evident that a sentence of life imprisonment is more often than not imposed for murder committed in these circumstances. The sentence of a term of years issued to Christopher Counsel in **Ryan McLean, Richard Gordon and Christopher Counsel v R**, seemed to have been on account of his guilty plea. **Timothy Smith v R** is an outlier among all the majority cases on this issue. In the instant case, it is particularly significant that it was the appellant and the deceased's friend that had the altercation. The stabbing of the deceased was senseless and unwarranted. Given the egregious nature of the murder, as highlighted in the factors outlined at para. [33] herein, the imposition of a sentence of a life imprisonment was indeed justified. We cannot say that sentence of life imprisonment is outside the normal range of sentences usually imposed in similar cases, nor could we say that a reasonable judge could not have arrived at that sentence in these

circumstances. Accordingly, the imposition of a sentence of life imprisonment was entirely appropriate and could not be considered manifestly excessive.

[36] Since we have deemed the sentence of life imprisonment to be appropriate, in considering the number of years to impose before eligibility for parole, section 3(1C)(b)(i) of the OAPA is relevant. It stipulates that where a sentence of life imprisonment is imposed, the pre-parole period should not be less than 15 years. We would again utilise the range identified in the Sentencing Guidelines of 15 years to life imprisonment. The learned trial judge had used a starting point of 20 years in the instant case. This was entirely appropriate in the circumstances. The appropriateness of this starting point is based on the fact that the applicant left the scene of an altercation (with someone other than the deceased), returned, having armed herself with a knife, enquiring as to the whereabouts of the women, went in search of them and having found them, she chased them with the knife. She ultimately stabbed to death an unarmed woman as she lay on the ground. We agree with and adopt the aggravating factors and mitigating factors identified by the learned trial judge. When they are considered, the aggravating factors outweigh the mitigating ones. This, therefore, results in the pre-parole period falling within the range of 20 to 22 years. After consideration for the approximately two months in custody, the period before eligibility for parole falls within a range of 19 years and 10 months to 21 years and 10 months. Consequently, the pre-parole period imposed by the learned trial judge could not be considered manifestly excessive.

**Conclusion**

[37] The heinous and nonsensical nature of this murder does not allow for the imposition of a fixed term of years. The sentence of life imprisonment, with the applicant serving 19 years and 10 months imprisonment before being eligible for parole, falls within the normal range of sentences usually imposed for murder in similar cases. Although the learned trial judge erred in principle in sentencing the applicant, in failing to expressly recognise the options she had, we could not say that the sentence she imposed was

manifestly excessive or that no reasonable judge could have arrived at it. Consequently, by a majority (Foster-Pusey JA dissenting) the orders of the court are as follows:

1. The application for leave to appeal against conviction and sentence is refused.
2. The sentence is reckoned to have commenced on 21 February 2020, the date on which it was originally imposed.