[2012] JMCA Crim 17

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 10/2009

BEFORE: THE HON MRS JUSTICE HARRIS P (Ag)
THE HON MRS JUSTICE MCINTOSH JA
THE HON MR JUSTICE BROOKS JA

JEFFREY PERRY v R

Ravil Golding for the appellant

Miss Paula Llewelyn, QC, Director of Public Prosecutions and Miss Yanique Gardener for the Crown

26, 29 and 30 March 2012

McINTOSH JA

[1] Mr Jeffrey Perry was convicted on 18 December 2008 in the Home Circuit Court on an indictment containing three counts for the murders of Sue-Ann Gordon, Shadeece Williams and Dwayne Davidson, respectively. He was sentenced on 16 January 2009 to suffer death in the manner authorized by law in relation to each murder. As told by their mother, Sonia Bailey-Williams, in her evidence at the trial, at the time of their deaths, Sue-Ann was 13 years old, Dwayne was 15 years old and Shadeece was a mere four years of age. They as well as the appellant resided in Kilancholly District in the

parish of St Mary and on the night of 27 January 2005 when Mrs Bailey-Williams left them at home at about 8:30, to make some preparations at her church for an event which was to take place there the following day, little did she know that she was taking leave of them for the last time. On her return to her home some time after 12 midnight she was met by a sight which she will no doubt never forget and so a mother's anguish began.

[2] The details of the gruesome event which resulted in the deaths of these three innocent children came from the lips of the appellant himself in a statement given to the police under caution and in answers to questions put to him by the police. He described how in response to voices, presumably in his head, he went to the home of Mrs Bailey-Williams, a cousin of his whose home he was well accustomed to visiting, gained access and relentlessly stabbed his young cousins to death, even as Sue-Ann begged him not to kill her and Shadeece begged him not to stab her. Sue-Ann, the appellant said, had managed to pull the door and run outside but he pursued her and stabbed her again even though by then she had collapsed. That, in brief, was his account of how he took the lives of his three young cousins that night.

[3] Although at first, the appellant sought to appeal against his conviction and sentence, in both his oral and written submissions his attorney-at-law, Mr Ravil Golding, quite correctly in our view, abandoned the appeal against conviction and pursued the appeal against sentence only. He sought and was granted leave to argue one

supplementary ground of appeal in which the complaint was that the learned trial judge failed to apply the correct principles when imposing the death penalty. He highlighted four areas of deficiency in the learned trial judge's approach to the sentencing process, namely, her failure to indicate which features of the case disclosed exceptional circumstances to warrant the sentence of death, her consideration of the absence of remorse which, according to the appellant's complaint, was irrelevant, her failure to take into account the Obsessive Compulsive Disorder (OCD) with which he was diagnosed and, finally, the learned trial judge's failure to give adequate consideration to any reasonable prospect of the appellant's rehabilitation.

[4] In his written submissions Mr Golding contended that the sentence of death was not the correct one in all the circumstances of this case. He relied on a line of authorities which in recent times have set guidelines for murder cases where the death penalty is an option, ***Peter Dougal v R*** [2011] JMCA Crim 13, being one such case in which this court, sitting in banc, followed the principles set out in ***Trimmingham v Regina*** [2009] UKPC 25, and the similar approach in ***Pipersburg v The Queen*** [2008] UKPC 11 and ***Maxo Tido v R*** [2011] UKPC 16. In his oral submissions he added the Indian case of ***Prajeet Kumar Singh vs The State of Bihar*** Criminal Appeal No. 1621 of 2007 in which the Supreme Court of India applied similar principles to those outlined in the aforementioned Privy Council cases. Mr Golding summarized the guidelines as follows:

> i) A notice of intention to seek the death penalty must be given in writing to the accused and his attorney-at-law

as soon as the accused has been indicted. The trial judge must also be informed of this (see ***Peter Dougal v R***).

ii) There is a presumption in favour of an unqualified right to life and the death penalty should be imposed only in exceptional and extreme cases of murder, variously described as the rarest of the rare and the worst of the worst (see ***Trimmingham; Maxo Tido; Pipersburg; Prajeet Kumar Singh***).

iii) It is mandatory for the trial judge to take into account the personal and individual circumstances of the convict, the nature and gravity of the offence, the character and record of the convict and factors which may have influenced his or her conduct leading to the commission of the offence (which in the instant case would include consideration of his diagnosed OCD condition). The possibility of his or her reform and rehabilitation must also be taken into account and a psychiatric report should be obtained to assist the judge in determining whether there was any reasonable prospect of reform. The sentencing judge must weigh all these factors in order to determine whether the death sentence or some lesser sentence should be imposed. (see ***Trimmingham; Maxo Tido; Pipersburg; Prajeet Kumar Singh***).

[5] Even before Mr Golding embarked upon his oral submissions the learned Director of Public Prosecutions conceded that there was a failure on the part of the Crown to follow the requirement for written notice to be given to the defence in this case where the prosecution intended to seek the death penalty. But for that, the Crown would have resisted the arguments that the death penalty was not the appropriate penalty the learned Director of Public Prosecutions submitted, the Crown being of the firm view that the circumstances of this case were of such a heinous nature as to warrant the ultimate sentence.

[6] Mr Golding was of the view however that, even in the absence of that technicality, the Crown would have been hard pressed to support the imposition of the death penalty as there was no evidence that this was a carefully planned murder or one carried out in furtherance of another crime such as armed robbery, rape, drug or human smuggling, kidnapping, serial killings and the like which would qualify as the rarest of the rare or the worst of the worst (see ***Maxo Tido***). However, in light of the learned Director of Public Prosecutions' concession which in our view was unquestionably correct and which effectively took the death penalty off the table, there is no need for this court to consider whether the threshold set by the authorities referred to has been reached to warrant the sentence of death and Mr Golding's only remaining task was to address the court on the appropriate pre-parole period to be imposed in all the circumstances of the case.

[7] He submitted that the murders for which the appellant was correctly convicted were brutal, cruel and diabolical in nature, grotesque, horrendous and evil but when one looks at the circumstances of this case it is immediately clear that this was not the carefully planned murders of innocent children. These were, in effect, totally unprovoked killings of family members with whom he had shared a good relationship as evidenced in the testimony of their mother. Although the prosecution has no obligation to prove motive, Mr Golding argued, for sentence purposes, motive is relevant. In this case, counsel submitted, it is clear that the appellant was suffering from some kind of mental disorder. The killings had the appearance of frenzied actions and the appellant

had been diagnosed with OCD which, though not qualifying as insanity under the McNaughton Rules pertaining to what constitutes insanity under the law, still requires consideration in determining an appropriate sentence as part of the appellant's personal and individual circumstances.

[8] Counsel further submitted that there have been several murders in Jamaica which could be said to rival the murders in the instant case in terms of their brutality and he referred in particular to the unreported case of ***Dennis McPherson v R*** which he said involved the brutal slashing of the throats of McPherson's sister's three children for which his death sentence was commuted to life imprisonment without parole for a period of 40 years. Counsel was inspired by the outcome of that case to suggest that, taking into account such factors as the period of seven years that the appellant has spent in custody since his apprehension, as well as his mental disorder, an appropriate pre parole period would be 35 years and he urged the court to make that determination.

[9] We have given careful consideration to counsel's submissions and to the principles which must guide the court in arriving at appropriate sentences. We took into account the mitigating factors urged upon us by Mr Golding, namely, that the appellant had been diagnosed with OCD, that he had no previous history of criminal or violent behaviour, that he assisted the police in their investigations into the murders and that there was no evidence of motive as he had had a good relationship with his young cousins and their mother and that he has already spent seven years in custody since

the commission of the murders. Against this must be weighed the aggravating features, the sheer horror of the murders according to the account given by the appellant, the slaughter of the innocents who could have posed no threat to him as they lay asleep in their home, the public revulsion at such diabolical actions and the reliance placed on the justice system, by members of the public, to mete out adequate punishment especially for offences of such a serious nature. Upon those considerations we find ourselves unable to accept the urgings of Mr Golding that a pre-parole period of 35 years would be adequate. In our deliberations a period of upwards of 50 years was considered but was discounted upon such weight as we felt the mitigating features deserved and we have come to the view that an appropriate pre-parole period is 45 years.

[10] Accordingly, our decision is that the appeal against sentences is allowed and the sentences of death, imposed on the appellant on 16 January 2009, are set aside. Substituted therefor are sentences of life imprisonment on each count, to run concurrently, with no possibility of parole until he has served 45 years, which period is to take effect from 16 January 2009.