CA: Criminal Law — Sentence — Evidence — Fresh evidence — Manslaughter by reason of diminished responsibility — Sentence of life imprisonment and recommendation to undergo psychiatric treatment — Fresh evidence admitted on appeal — Substituting imprisonment in appellant's condition — Factors to be considered by judge in sentencing — Whether in circumstances sentence alternative — Appeal allowed — Sentence varied — one of seven years imprisonment at hard labour ordered — Cases referred to R v Chambers (1983) GrnLR 688

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 14/92

Criminal Practice — Evidence — V comp

COR: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE GORDON, J.A.

R. v. JASON ROWE

Richard Small for Appellant

Kent Pantry for Crown

February 3, 4 & March 1, 1993

GORDON, J.A.

On 17th February 1992, the appellant pleaded guilty to one count of manslaughter by reason of diminished responsibility and two counts of wounding with intent. On 5th Februar 1992, he was sentenced to life imprisonment and recommended to undergo psychiatric treatment. On 10th February 1992, he appealed claming that the sentence was harsh and manifestly excessive.

At the conclusion of the hearing we allowed the appeal, set aside the sentence of life imprisonment and imposed a sentence of seven years imprisonment at hard labour to commence on 4th February 1993.

The facts outlined by Crown Counsel at the trial are bizarre and revolting. The appellant lived with his parents, Leroy and Mazie Rowe and his sister Joni Rowe at Stony Hill in St. Andrew. On the 25th September 1991, about 5.30 p.m. his sister Joni went home and saw the appellant and his girlfriend Nicola Brown. The appellant declared he was God and pulled his sister into the bathroom and declared "Let us cleanse our body, Let's make love." Joni summoned her mother and Nicola and they tried to calm the appellant. The appellant declared his love for all of them and Joni left the room. Joni was alerted by screams and she ran to the

bathroom there she saw the **appellant** striking their mother in the head with a hammer. The applicant then attacked Joni and smashed her head with the hammer - she fell unconscious.

A witness visited the home about 7.00 p.m. and saw the **appellant** leaving the house stark naked. On entering the house Joni Rowe was found injured on the bathroom floor, her mother also lay there unconscious and Nicola Brown's body with her head smashed and the skull devoid of brain tissue lying on the kitchen floor. The **appellant** was found wandering in the area, naked. He had to be forcibly subdued by police, assisted by citizens. Mrs. Mazie Rowe spent seven weeks in the University Hospital. She had severe head injuries. Joni Rowe spent two weeks in hospital.

At the hearing Dr. Franklyn Ottey a consultant psychiatrist told of the examination he made of the **appellant** on 8th January 1992. He had a history of past psychiatric treatment at the University of the West Indies in 1990 and at Bellevue Hospital since his arrest on the charges. Dr. Ottey found he had delusional ideas of a grandiose and persecutory nature. The doctor **said** "In my opinion, he suffers from a paranoid psychosis, the features of which are presently in substantial remission. Most of the features he is not showing right now, but he certainly has had in the past and I felt that this illness is likely to have caused substantial impairment of his mental state at the time that the offence was allegedly committed." Dr. Ottey opined that the **appellant** "needs a sustained period of observation after treatment." The doctor said stress can precipitate paranoid psychosis, it could also be caused or made worse by pycho-active substances such as drugs. He had **an** admission from the **appellant** that he was at one time seen at the University Hospital of the West Indies after he had used ganja.

The antecedents showed that the **appellant** had been a student at C.A.S.T studying Architecture when he left to obtain employment. Employed by a bank he was dismissed for dishonesty and was unemployed at the time of the incident.

A probation report was placed before the Court. It revealed that the appellant's use of ganja (canabis) was not a "one time affair" but that there had been a fairly lenghty period of indulgence by the **appellant** in the use of the drug. The officer who prepared the report expressed puzzlement at the parents' ignorance of the **appellant's** drug habit although it was claimed that the family relationship was very close.

In imposing sentence the learned trial judge said:

> "The law is, a matter I should mention, is that when the court is sentencing an offender in a simple case of manslaughter the court should impose a determinate sentence and should not pass the difficult matter of sentencing and the length of detention to others. But your case Mr. Rowe, is not a simple case of manslaughter. The law also says where the nature of the offence and the makeup of the offender are of such a nature that the public requires protection for a considerable time, unless there is a change in the offender's condition, it is right to impose a life sentence. That is the law. And that has always been the practice. (accused cries in dock) I see no reason to depart from the law and the established practice.
> Accordingly, I am in duty bound to impose sentence of life imprisonment on each count, with a strong recommendation yet again, for appropriate treatment of this offender, psychiatric treatment."

The learned trial judge in imposing sentence paid due regard to the material placed before him in the evidence of Dr. Ottey and the social **enquiry report of the Probation Officer** He felt constrained to ignore the recommendation of the Probation Officer for a non-custodial sentence and imposed a sentence based primarily on the medical evidence and what the justice of the case in his view demanded.

Before us the appellant urged a supplementary ground of appeal:

"1. The sentence of life imprisonment should in the circumstances of this case be reviewed in the light of new evidence available showing the present psychiatric and psychological condition of the Applicant. In support of this, the applicant seeks the leave of the Court to adduce evidence from the witnesses set out in the Notice of application to call Fresh Evidence."

Permission sought was granted and the evidence of Dr. Franklyn Ottey and Dr. Peter Weller was heard and the Court examined affidavits from the **appellant's** parents and sister.

Dr. Ottey said the appellant is now free of the psychiatric disturbances he had previously. Initially he had been on medication but he has been off medication since the time of his imprisonment. In his opinion the **appellant** should continue under psychiatric supervision in a structured environment which would facilitate his rehabilitation. This was indicated he said because the **appellant** had a psychiatric incident and there is always the possibility of a reversion. However, if the **appellant** is monitored, any tendency to reversion would be more easily detected. He bemoaned the lack of adequate rehabilitative programmes in prison. Dr. Ottey said further that the paranoid psychosis from which the appellant suffered was now totally in remission.

We were afforded the report of Dr. Thesiger, consultant Psychiatrist who examined the **appellant** on 21st October 1991. The doctor states in his report:

"He had a psychiatric consultation with Dr. Irons in August 1991, soon after he lost his job with the bank. On September 18, 1991 he was seen at Medical Associates Hospital after using ganja. He felt that he was going to die and apparently the attending physician advised that he be admitted to the University Hospital. He was seen at Ward 21, UHWI, but did not want to stay, and left the hospital. He admitted that he did not remember very clearly everything that took place."

> "In my opinion, this is a 22 year old young man who after being unsettled for a few months had a BRIEF REACTIVE PSYCHOSIS during which he killed his girl friend and injured his mother and sister. At that time his judgment was impaired. At interview, he did not show any signs of a psychosis, but was obviously very concerned about his fate, and was trying to deal with the psychological impact of the injuries he inflicted on his mother and sister and the death of his girlfriend. He would be required to be in therapy for a prolonged period of time."

We were urged that in the circumstances of the appellant's present mental state the sentence of life imprisonment was inappropriate and we should consider a sentence which would conduce to rehabilitation of the appellant and preparation for his ultimate re-admission to society. Dr. Weller spoke of facilities available at Richmond Fellowship Jamaica Limited which falls under the umbrella of the National Council of Drug Abuse.

The available evidence suggests that the appellant was under stress prior to the incident. The onset of the psychosis was precipitated by drug abuse and his enforced withdrawal in incarceration has led to a total remission of the psychosis. That did not mean that the appellant had got over his illness which manifested itself in his late adolescent years when he became depressed, probably through stress. It seemed, however, that the impairment of his judgment was drug induced and this must be a factor in determining the sentence that should be imposed in the light of the medical evidence as to his present mental state.

There is no dearth of authority of the sentencing options a judge has in cases of manslaughter by reason of diminished responsibility. Decided cases establish that where the prisoner's mental condition is incurable or he constitutes a danger to the public for an unpredictable period of time a sentence of life imprisonment will in all probability be the correct sentence. "If the evidence indicates that the responsibility of the accused for his acts was so grossly impaired that his degree of responsibility

was minimal a lenient course will be open to the judge." (**R. v. Chambers** [1983] Crim. L.R. 688 at p. 689). Where there is no danger of a repetition of violence sentencing options other than imprisonment are open to the court.

In cases in which the accused's degree of responsibility is not minimal "the judge should pass a determinate sentence of imprisonment, the length of which will depend on two factors - his assessment of the accused's responsibility for his acts and his view of the period of time for which, if any, the accused would continue to be a danger to the public." **R. v. Chambers** (supra).

At the hearing, the trial court had before it medical evidence of Dr. Ottey that the paranoid psychosis features in the **appellant** were "presently in substantial remission."

There was no evidence of a prognosis of the likely duration of the psychosis or of the duration of treatment which would or could lead to total remission. The report of Dr. Thesiger as recorded above does not appear to have been brought to the attention of the Court although, having regard to the date it bears, it must have been available. The court then as now was urged to consider alternatives to imprisonment. In the absence of Dr. Thesiger's report the court had evidence of a mental condition of indeterminate duration and considered the appropriate sentence to be that which was imposed. It addressed Dr. Ottey's concern for supervision in controlled circumstances.

The evidence now placed before us shows that the **appellant** is not a fit and proper subject for life imprisonment. A determinate sentence is appropriate and his responsibility for the crime is not minimal. The review of the options available in these cases shows sentences of imprisonment ranging from three to seven years (**R. v. Chambers-commentary**).

The appellant's degree of responsibility for the crime committed is, in our view, at the upper limit. In the social enquiry report the Probation Officer states:

> "When questioned Jason said he has been on the drugs for a considerable length of time but he had difficulty in being specific."

We considered that the sentence that should be imposed is the upper limit indicated in decided cases and accordingly we dealt with the application as the hearing of the appeal as indicated.