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JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NOS. 184, 185 AND 186 OF 1999

MOTIONS NOS. 52 & 53/01

BEFORE: THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MR. JUSTICE LANGRIN, J.A.
THE HON. MR. JUSTICE PANTON, J.A.

REGINA V. RUDOLPH DODD

KARL WAUCHORPE

BILLY WEST

George Soutar for Rudolph Dodd

Glen Cruickshank for Karl Wauchorpe

Ian Ramsay, Q.C., and Deborah Martin for Billy West

Paula Llewellyn, Deputy Director of Public Prosecutions,
for the Crown

October 22 and December 20, 2001

PANTON, J.A.

On October 8, 2001, we allowed the appeals against the conviction of murder in this matter and substituted a verdict of guilty of manslaughter. At that time, we also imposed a sentence of ten years imprisonment at hard labour on each appellant. Subsequently, the appellants each filed a motion seeking to make submissions in relation to the sentences. We acceded to this request as it is a fact that at the time of the hearing of the appeals, no submissions were advanced on sentence.

On October 22, 2001, counsel addressed us, placing great emphasis on the fact that the appellants were first offenders and that the incident had its genesis in a legitimate law enforcement mission.

Mr. Ramsay, Q.C., cited several cases of manslaughter decided in the English Court of Appeal between 1979 and 1985. Those cases suggest, it seems, that lenient sentences should be the order of the day. Particular reliance was placed on a statement of Watkins, L.J. in **R. v. Phillips** (1985) 7 Cr. App. R. (S):

"A sentence of seven years is usually passed for a very grave case of manslaughter ..."

Mr. Ramsay also referred to the case **R.v. Stanley McKenzie** (Supreme Court Criminal Appeal No. 62/91) delivered on March 11, 1992, in which the appellant, an Inspector of Police, was sentenced in the Home Circuit Court to three years imprisonment for manslaughter committed in the course of his duty as a policeman. The victim was another policeman, and the scene was a night club where a dance was being held. The appellant had gone to the club in response to a complaint that loud noises were emanating from the dance.

He submitted that in the Jamaican situation, the sentence for manslaughter is usually in two ranges; in the higher band, it ranges between seven and ten years, whereas in the lower band it is between eighteen months and three years. The instant case, he said, qualified for treatment within the lower band. We cannot agree with learned Queen's Counsel and the other counsel who both adopted these submissions.

The English cases to which we were referred may easily be distinguished as they did not involve law enforcement officers acting in the course of their duty. Furthermore, in Jamaica, unlike in England, there is a high incidence of homicides committed by persons who are sworn to "keep watch by day and by night, to preserve the peace,

(and) to detect crime" (section 13 of the Constabulary Force Act). Courts in Jamaica cannot therefore be expected to follow without very good reason the extremely lenient trend demonstrated in the cases cited to us. Sentences have to bear some relevance to the society in which they are passed. So far as the **McKenzie** case is concerned, we do not regard it as a proper guide in the circumstances of the instant case.

Mr. Soutar brought to our attention the fact that the appellants had been in custody for a year and three months prior to the hearing of the appeal, although at the time of the hearing they were on bail. That is a fact of which we were unaware. Accordingly, that fact was not considered by us when we imposed the sentences on October 8. It is right and just that we should give it due consideration, and the sentences should reflect it. We feel that a sentence of ten years imprisonment is appropriate given all the circumstances of the case. However, in the light of the information that we now have, the sentence of the Court is that each appellant is to serve nine years imprisonment at hard labour, commencing from October 8, 2001.