J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 52/73

Before: The Hon. President
The Hon. Mr. Justice Edun, J.A.
The Hon. Mr. Justice Hercules, J.A.

REGINA vs. VALERIE WITTER

Courtney Orr, Esq., for Crown
K. E. St.Bernard, Esq., for Appellant

20th December, 1973

Henriques, P.

The applicant in this case, Valerie Witter, was charged at the St.Elizabeth circuit court on the 10th of April, 1973, with the murder of a young girl, Merlene Hylton, which was alleged to have taken place on the 16th day of April 1972. At the outset of the trial the defence invited the prosecution to accept a plea of guilty of manslaughter to the indictment and the prosecution with the permission of the court accepted the plea and the applicant was sentenced by the learned trial judge to imprisonment for life with a recommendation for psychiatric treatment.

The applicant has sought leave to appeal against his sentence alleging that it is manifestly excessive. What transpired at the trial, reading from page one of the record is this:

After the case was called on the defence attorney, Mr. Seaton rose to his feet and stated to the court:

"Before the court is Valerie Witter for whom I appear. Mr. Wright and Miss Hylton appear for the prosecution. I am wondering if he could be pleaded m'lord.

Registrar: Valerie Witter, you are charged on an indictment which charges you with murder in that you on the 16th day of April, 1972 in the parish of St.Elizabeth murdered Merlene Hylton. How say you, are you guilty or not guilty?

Accused: Guilty to manslaughter, m'lord.

His Lordship: Crown Attorney.

Crown Attorney: I think your lordship is well aware of the facts.

His Lordship: Are you accepting this plea?

Crown Attorney: Yes m'lord, with the court's permission.

His Lordship: I certainly would have no objection to the plea being accepted, having regard to what is here.

Crown Attorney: It is true, m'lord, this would be on the basis of diminished responsibility as Dr. Williams' examination of the accused shows no positive mention of disease but he finds some mental aberration. The antecedents have been prepared but the Corporal cannot find the file; it is being typed at the moment".

Then evidence was given by Detective Corporal Lloyd Robinson which shows that the applicant had to leave school at a very early age and was unable to read or write and that this is due to the fact that he is of very poor parentage. Then after leaving school he tried to learn mason work and used to visit the construction site where he mixed concrete and he was earning a livelihood from such an excercise. He was of a very quiet nature and he was always gainfully employed. After hearing learned defence attorney/the trial judge proceeded to pass sentence. Having passed sentence the applicant has seen fit to appeal against his sentence.

Now this court has to determine whether or not that was an appropriate sentence to pass. It is important that it should have before it the material upon which the learned trial judge acted. As appears from the record of which I just quoted, when the learned trial judge stated, " I certainly would have no objection to the plea being accepted, having regard to what is here, " we are not in the position of knowing what was in fact there before the learned trial judge. As a result when this matter first came before this Court, the Court thought it necessary to have summoned the doctor at the Bellevue Hospital who had examined the applicant and whose report it would appear apparently was before the court below but did not form part of the record. Accordingly Dr. Vincent Williams, a former Senior Medical Officer of Bellevue Hospital, has at the request of the court attended here today and given the result of his examination and his findings in relation to that examination of the applicant.

The court is therefore, now in a proper position to say whether

or not it considers that the sentence passed was an appropriate one or not.

It seems from the previous experience of the court that there appears to be some misunderstanding as to the nature or manner of the proceedings which should take place where the defence is seeking to enter a plea of guilty on the ground of diminished responsibility to a charge of murder. It seems to be uncertain as to whether the evidence tendered before the court should be tendered by the defence or by the prosecution but one thing is clear and that is that medical evidence must be tendered to the court. Before 1968 it was impossible for a person accused of murder to enter a plea of guilty of manslaughter on the ground of diminished responsibility but since the decision of the case of R. v. Maurice George Cox, Cr. App. R. (1968) Vol. 52 p. 130 it is perfectly in order for the defence to invite the prosecution to accept such a plea and for the prosecution with the permission of the court to accept the invitation and I quote from a passage of the judgment of Lord Justice Winn who presided over the Court of Appeal in that case:

" This is an appeal by leave of the single judge against a sentence which was passed upon the appellant when he had been convicted of manslaughter on the ground of diminished responsibility, having been indicted for murder. That occurred on March 20, 1967, the victim who was killed, having been his own wife and her death having occurred on the evening of January 27.

It is, the Court thinks, worthy of remark that from the very outset of the trial it was quite clear not only that the accused was prepared to plead guilty to manslaughter on the grounds of diminished responsibility, but that the medical evidence available, in the possession of the prosecution as well as the defence, showed perfectly plainly that that plea was a plea which it would have been proper to accept. However, the matter proceeded to be tried by the jury, as a result of which time and money was spent and the appellant was no doubt kept in some anxiety and uncertainty whilst the trial went on. The Court desires to say yet again not at all for the first time in the experience of every member of the Court, that there are cases where on an indictment for murder, it is perfectly proper, where the medical evidence is plainly to this effect, to treat the case as one of substantially diminished responsi-

bility and accep[t], if it be tendered, a plea of manslaughter, on that ground, and avoi[d] a trial for murder."

So it appear[s] that it is of vital importance that medical evidence should be taken [s]o 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 necessa[ry] material to determine whether in all the circumstances the sentence pa[ss]ed by the learned trial judge was or was not an appropriate one.

In our view[,] such evidence at the trial should be lead by the defence, I understand fr[o]m the practice that every person accused of murder is at the instance of the prosecution examined by the Senior Medical Officer at Bellevue Ho[s]pital or one of the medical practioners there and his findings furnished to th[e] prosecution, then that report is made available to the defence and it [i]s at that stage that the defence can then determine whether or not [i]t will invite the prosecution to accept a plea of guilty of manslaughter [o]r not. The prosecution before accepting the plea, as infact was done [i]n the instant case, would then seek permission of the Court. Unfortun[a]tely, the medical evidence which existed in the form of a report doe[s] not appear on the record and the court has found it necessary to a[d]opt the procedure that it has. We hope, in the future, that the prac[t]ice which I have endeavoured to outline would obtain in all future cases [o]f this character.

Having hea[r]d Dr. Williams' evidence the court feels that in the light of all the ci[r]cumstances, the sentence passed by the learned trial judge was an appro[p]riate one. The Court is, therefore, disposed to refuse the application.

The appli[c]ation is accordingly refused.