



[2020] JMSC Crim 2

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CRIMINAL DIVISION**

**CLAIM NO. HCC 57/(1) 14**

**BETWEEN**

**REGINA**

**CROWN**

**AND**

**ODAIN CAMPBELL**

**DEFENDANT**

**Ms Sophia Thomas Assistant Director of the Director of Public Prosecutions for Crown**

**Mr. Leroy Equiano and Ms Denise Walker for Defendant**

**Heard: 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, 21<sup>st</sup> January and 28<sup>th</sup> February 2020.**

**L. Shelly-Williams, J**

**Sentence: Gun related murder - Secondary participant.**

### **Background**

**[1]** On the 9<sup>th</sup> of October 2013 the Defendant was called by another person (B) and he brought a black bag to that person. The bag was opened and it contained a firearm. B in the presence of the Defendant, then said he is going to kill “Jimmy”. Jimmy was called and B along with the Defendant met up with him. B then shot and killed Jimmy in the presence of the Defendant and they both left.

**[2]** In approaching sentencing in this matter, I was guided by statute and by the sentencing guidelines.

## The Statute

### OFFENCES AGAINST THE PERSON

3. (1C) *In the case of a person convicted of murder, the following provisions shall have effect with regard to that person's life eligibility for parole, as if those provisions had been substituted 6(1) to (4) of the Parole Act-*

a) *where a court imposes a sentence of imprisonment for life pursuant to subsection (1)(a), the court shall specify a period, being not less than twenty years, which that person should serve before becoming eligible for parole; or*

b) *where, pursuant to subsection (1)(b), a court imposes –*

i. *A sentence of imprisonment for life, the court shall specify a period being not less than fifteen years; or*

ii. *Any other sentence of imprisonment, the court shall specify a period, being not less than ten years,*

*which that person should serve before becoming eligible for parole.*

## Sentencing Guidelines

[3] The sentencing guidelines mirrors somewhat the Offences Against the Persons Act and as such merely indicates the minimum that the courts should consider before possibility of parole.

## Case Law

I will be relying on the case of **Techla Simpson v R** [2019] JMCA Crim 37. The facts in the case of **Techla Simpson v R** are that two men on the 17<sup>th</sup> of November 2004 shot Constable Joshua Black several times killing him. The deceased was robbed of two firearms one of which was used to shoot him. In that case the trial judge sentenced the defendant to life imprisonment with 40 years before the

possibility of parole. Brooks J in his decision considered a number of cases including the cases of :-

- a. **Christopher Thomas v R**, [2018] JMCA Crim 31 where Morrison P, reduced the sentence of the Applicant from 40 to 28.5 years. This was a case where Mr Thomas had killed a police officer in an act of reprisal.
- b. **Paul Brown v R** [2019] JMCA Crim 3 where F. Williams JA, reduced the sentence of the Applicant from 35 to 23 1/2 years. This was a case where the Appellant opened gunfire at Linval Murray who ran. Mr Murray was chased by the Appellant who continued to chase him. Mr Murray died from gunshot wounds.

[4] In the case of **Techla Simpson v R** the Court of Appeal ruled that the Defendant was to serve 38 years before the possibility of parole.

[5] Prior to handing down the sentence in this matter, I will take into consideration the time the Defendant spent in custody. I will abide by the principles detailed in the case of **Charley Junior v R** [2019] JMCC Crim 16. These principles being that:-

- a. there is a primary rule that full credit must ordinarily be given to pre-trial incarceration;
- b. the credit should as far as possible be done by way of an arithmetical deduction;
- c. A sentencing judge has a discretion, in certain circumstances, to depart from the primary rule; and
- d. one of the exceptions that the sentencing judge may apply imprisonment or remand in respect of unconnected offences.

[6] I have recognised the principles laid down in 11.4 of the Sentencing Guidelines, which state that:-

*“Despite the general the [that full credit must ordinarily be given to pre-trial incarceration], the sentencing judge retains a residual discretion to depart from it in exceptional cases, such as, example:*

- i. where the offender has deliberately contrived to enlarge the amount of time spent on remand;*
- ii. where the offender is or was on remand for some other offence unconnected with the one for which he or she is being sentenced;*
- iii. where the offender was serving a sentence of imprisonment during the whole or part of the period spent on remand; and*
- iv. generally where the offender has been in custody for more than one offence and cannot therefore expect to be able to take advantage of time spent on remand more than once.” (Emphasis supplied)*

## **The Sentence**

**[7]** The aggravating circumstances of this case among other things are:

1. The defendant took the firearm to the person who committed the murder.
2. The firearm was never recovered.
3. Prevalence of this type of crime in society.
4. The murder took place in the middle of the day before a number of persons.

**[8]** Mitigating circumstances:-

1. The Defendant has a fairly good social enquiry report having regard the aspect of his community report.
2. The Defendant has no similar previous conviction recorded against her.
3. The time spent in custody.

- [9] I have taken into consideration the plea in mitigation as well as the aggravating and mitigating circumstances. I note that the Defendant has no previous conviction recorded against him.
- [10] The sentence of the Defendant would be a life sentence. In considering the issue of possibility before parole, I take into consideration the case of **Techla Simpson v R**. The facts in this case do not include the element of robbery. In light of that, my starting point will be 25 years. Due to the aggravating circumstances listed above, I will increase the sentence by 10 years. I will deduct:
1. one year for the positive aspect of social enquiry report.
  2. one year for the fact that he has no previous conviction.
  3. The period of time that the defendant has been in custody, which is three and a half years.
- [11] The Defendant is hereby sentenced life imprisonment 29 years six months before the possibility of parole.