[2010] JMCA Crim 86

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 126/2007

BEFORE: THE HON. MR JUSTICE PANTON P
THE HON. MR JUSTICE DUKHARAN JA
THE HON. MISS JUSTICE PHILLIPS JA

EVON SMITH v R

Ian Wilkinson for the applicant

Kerri-Ann Kemble for the Crown

15 and 18 November 2010

ORAL JUDGMENT

PANTON P

[1] On 12 October 2007, Donald McIntosh, J sentenced the applicant to imprisonment for life for the offence of murder, with a specification that he be not eligible for parole before he has served a period of 15 years. The Privy Council had earlier, on 14 November 2005 to be precise, allowed the applicant's appeal against conviction for capital murder, substituted a conviction of murder, and remitted the matter to the Supreme Court for it to determine the appropriate sentence.

[2] Before us, on 15 November 2010, the applicant through his attorney-at-law, Mr Ian Wilkinson, contended that the sentence imposed is manifestly excessive. Mr Wilkinson submitted that the learned judge failed to consider adequately, or at all, the relevant factors that are to be considered in sentencing an individual convicted of murder. In an apparent attempt to demonstrate the validity of his submission, he listed the factors he said that a sentencer should bear in mind. They include the following:

> "(a) Type and gravity of the offence;
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> (b) character of the convict;
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> (c) capacity for reform and continuing dangerousness;
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> (d) views of the victim's family;
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> (e) mental state;
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> (f) lack of premeditation;
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> (g) delay up until time of sentence and prison conditions; and
>
> (h) guilty pleas."

[3] Mr Wilkinson referred to the social enquiry report which showed that the applicant was well respected in his community, and that his behaviour had shocked almost everyone as hitherto he had lived a normal life while being very attentive to his children. In Mr Wilkinson's view, the applicant's rehabilitative character was a mitigating factor which should be considered. He suggested

that an appropriate sentence would be one which would allow for the applicant to be considered for parole after serving five years from 12 October 2007.

[4] In determining whether the sentence is manifestly excessive, the circumstances of the offence are of paramount importance. So too is the attitude of the applicant in relation to the crime of which he has been convicted.

[5] The circumstances were horrendous. The applicant is single and has fathered seven children by three women. The deceased was one of those women. He climbed on a ladder, entered the bedroom of the deceased at night while she slept and then proceeded to use a machete to hack her to death.

[6] In imposing sentence, the learned trial judge reminded himself that the applicant had been in custody for seven years and had been under sentence of death. He examined the prospects for rehabilitation and expressed himself as not being optimistic in that regard, given the failure of the applicant to acknowledge his wrongdoing. The learned trial judge also said that family considerations, such as children, were not appropriate for consideration in a case of this nature.

[7] We view the circumstances of the killing as horrific and coldblooded, accompanied by a fair degree of planning. We think that the applicant's lack

of remorse overshadows in a significant way the favourable light in which the members of his community hold him. We think that when considered with the period of time that the applicant has spent in custody, the sentence imposed by the learned trial judge cannot in any way be described as manifestly excessive. This case in our view, highlights the callousness of some persons in our society so far as their respect for the constitutional right to life of others is concerned. The application for leave to appeal is refused and the sentence is to run from 12 October 2007.