

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 33/2008

BEFORE: THE HON. MR. JUSTICE SMITH, J.A.
THE HON. MR. JUSTICE COOKE, J.A.
THE HON. MRS. JUSTICE M^CINTOSH, J.A.(Ag.)

OMARI VASSELL v REGINA

Applicant unrepresented.

Mesdames Deneve Barnett and Keisha Prince for the Crown

June 8, 2009

Oral Judgment

COOKE, J.A.

1. The applicant, whose application is only as to sentence, pleaded guilty on the 4th March 2008 in the Portland Circuit Court to an indictment which charged him for the murder of David Cargill. The bald facts are that on the 17th November 2007 at about 9:30 a.m., the deceased, a 42 year old fisherman, was at Panton's Hope, a district in the parish of Portland. Apparently this is near to the fishing village where the deceased carried out his occupation. He was there talking to his cousin, when the convict as he now is, came up behind him with a gun and fired at him resulting in fatal injuries to his left ear, his face and his back. In the

statement after caution, curiously enough given in the presence of three justices of the peace, the applicant gave his reason for the shooting that the deceased's brother had chopped one of his friends. That brother had been taken into custody, so he, the applicant, could not reap vengeance on the brother, so he took it out on the deceased.

2. The learned trial judge, sentenced, as he was obliged to do, the applicant to a term of life imprisonment and directed that 30 years should elapse before the question of parole should be considered. The antecedents of the applicant showed that he was 19 years of age, his counsel in mitigation said that he was contrite and he expressed remorse. In the antecedent report it was demonstrated that he was not denied the educational opportunities of primary school. He also went to a technical high school. The judge considered all this and found that his behaviour was reminiscent of the "Italian Mafia crew".

3. We have come to the conclusion that the principle that a person who pleads guilty should have some reduction made in his sentence was not applied in this case. It was a heinous murder, but nonetheless, the court must not ignore the guidance in respect of the reduction of sentence.

4. Accordingly, the application for leave to appeal against sentence is granted. This application is treated as the hearing of the appeal. The sentence in respect of the aspect pertaining to the 30 years before parole is set aside and inserted therefor is a term of 25 years. So, the sentence will now read, life imprisonment, and the applicant will serve 25 years before parole can be considered.