



In The Supreme Court of Bermuda

CRIMINAL JURISDICTION

2012 No: 7

BETWEEN:

R

-v-

RASHAUN CODRINGTON

(Defendant)

RULING

(In Court)

Date of hearing: 30th July 2013

Date of ruling: 5th September 2013

Mr Carrington Mahoney and Mr Geoffrey Faiella, Chambers of the Director of Public Prosecutions, for the Prosecution

Mr Charles Richardson, Compass Law Chambers, for the Defence

1. On 20th February 2013 the Defendant, Rashaun Codrington, pleaded guilty to the murder of Malcolm Outerbridge. He tendered a written basis of plea which was not signed by prosecuting counsel but to which, when the plea was entered, prosecuting counsel did not demur. It did not emerge that the basis of plea was not acceptable to the prosecution until the eve of the sentencing hearing on 30th July 2013. This was more than 5 months after the plea was entered.
2. I raised the issue as to whether, in the circumstances, Mr Codrington had a legitimate expectation that the Court should accept his written basis of plea without hearing

evidence from him, and heard submissions on the point. This is my ruling. I have concluded that he does not.

3. It is unfortunate that the prosecution did not indicate that the basis of plea was unacceptable, or expressly reserve their position, when the plea was entered. However silence cannot generally be construed as consent. Moreover, as noted above, the written basis of plea was not, as it should have been if it were agreed, signed by both counsel. Underwood [2005] 1 Cr App R 13 para 4.¹ I therefore find, not without hesitation, that the prosecution did not agree to the written basis of plea.
4. The prosecution's position is thus consistent with the principle that the prosecution should not agree with or acquiesce in an agreement which contains material factual disputes or where the defendant asserts matters outside the knowledge of the prosecution. Underwood para 5. That principle is not, of course, dispositive of whether in this particular case the prosecution did agree.
5. More fundamentally, and irrespective of whether the prosecution consented to the written basis of plea, the consent of the parties does not bind the Court, which must exercise an independent discretion. Underwood para 6. Although, if the prosecution does consent to the written basis of plea, that is something which the Court will take into account. Underwood para 6. Therefore, even where a basis of plea has been agreed, a defendant does not have a legitimate expectation that the Court will sentence him on that basis. Robotham [2001] 2 Cr App R (S) 69 paras 18 – 20.
6. I must therefore consider whether there are any discrepancies between the prosecution and the defence version of events and, if so, whether they are material to sentence.
7. Where the factual basis for sentencing is not agreed, the Court may direct a Newton hearing to resolve the dispute. But it need not do so if the difference between the 2 versions of fact is immaterial to sentence, in which case the defendant's version must be adopted. Cairns [2013] Crim LR 616; [2013] EWCA Crim 467 para 6.
8. On the other hand, the Court should not accept a plea on an artificial basis. George [2006] 1 Cr App R (S) 119 para 21. I take this to mean one that is unsupported by or inconsistent with the evidence.
9. I conclude that where the prosecution does not accept the defence version of events, but where the difference between the prosecution and defence versions is immaterial to sentence, the Court should not normally accept the defence version unless there is at least some evidence to support it.

¹ This, like all the other cases cited in this ruling, was a judgment of the Court of Appeal of England and Wales.

10. In this case, there are 2 potentially significant discrepancies between the prosecution and the defence accounts of the murder.
11. The first discrepancy is that the prosecution say that the attack was planned whereas the defence say that it was not. Another word for “*planned*” is “*premeditated*”. Under the Criminal Code Act 1907, premeditated murder and murder are different offences. The minimum term to be served on conviction for premeditated murder is greater. This is because, all other things being equal, a murder that is premeditated is even more serious than one that is not.
12. I cannot sentence Mr Codrington on the basis that the murder was premeditated because that is not the offence of which he has been convicted. A court must not make findings of fact and pass sentence on a basis that is inconsistent with the count to which the defendant has pleaded. Underwood para 10(b). Neither may the prosecution put forward a version of facts which is indicative of a more serious offence than that to which the defendant has pleaded guilty. Druce (1993) 14 Cr App R (S) 691 at 694.
13. However the evidence which the prosecution say points to premeditation is admissible to show that Mr Codrington tried to clean up the evidence of his wrongdoing with a degree of method and deliberation. That is something which I can properly take into account when passing sentence.
14. I can do so irrespective of whether Mr Codrington received assistance from a third party after the attack. There is evidence from which the Court could properly conclude that he did, at least to the extent of moving Mr Outerbridge. This is not inconsistent with the basis of plea. Mr Codrington states that no one else was involved in the fight, which is not disputed, but says nothing about its aftermath.
15. The second discrepancy is that the prosecution say that the attack came suddenly, “out of the blue”. Mr Outerbridge reported to the 911 operator that he had been “*jumped*” and that “*the guy just came at me like*”.
16. The defence, on the other hand, say that the attack was the culmination of an argument that got out of hand. Mr Codrington hit Mr Outerbridge and they began to fight. When Mr Outerbridge began to get the better of Mr Codrington, the defendant stabbed him.
17. The prosecution fairly make the point that there is presently no evidence to support Mr Codrington’s version of events. That version is not easy to reconcile with the evidence that is before the Court.

18. I cannot say that the difference between the 2 versions is immaterial. Each gives a different texture to the offence. That is part of the factual matrix to which the Court will have regard when passing sentence.
19. If Mr Codrington wishes to be sentenced on the basis of his account of the murder he must therefore give evidence about what happened. The Court will then resolve the conflict of evidence applying the normal criminal burden and standard of proof. Underwood para 9.
20. However it is not disputed that Mr Codrington stabbed his victim 27 times. Three of the stab wounds were serious, and on their own or in combination caused the death of Mr Outerbridge through loss of blood. While Mr Codrington's account provides an explanation of how he came to carry out these actions it does not mitigate their seriousness. Eg the Practice Statement (Crime: Life Sentences) [2002] 1 WLR 1789, which applies to sentencing in England and Wales, states at para 10 that cases which attract the normal starting point for a minimum term typically arise from a quarrel or loss of temper between two people known to each other.
21. It is true that an offender's culpability can be significantly reduced by such factors as provocation (in a non-technical sense) and the excessive use of force in self-defence. Practice Statement (Crime: Life Sentences) para 11. But even were Mr Codrington to give evidence, his counsel would have a steep uphill struggle to persuade me that, based on the facts set out in the written basis of plea, he should on account of either of these factors receive a lower minimum term.
22. Mitigation in the present case will lie less in the facts of the offence, upon which I doubt that defence counsel will wish to dwell, than in factors personal to the offender: his age at the date of the offence, timely guilty plea, and expressions of remorse.

Dated this 5th day of September, 2013 _____

Hellman J