



# In The Supreme Court of Bermuda

## CRIMINAL JURISDICTION

2012 No: 7

**BETWEEN:**

**R**

**-v-**

**RASHAUN CODRINGTON**

**(Defendant)**

### SENTENCING REMARKS

**(In Court)**

Date of hearing: 5<sup>th</sup> 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. Malcolm Outerbridge was an exceptional young man. Malcolm Outerbridge was a friend of yours. You murdered Malcolm Outerbridge. Now here you are. And for what?
2. It was a wicked, stupid, senseless act. Not only have you robbed your friend of his life, but you have caused immense suffering to his family – and we have heard something of that today – and no doubt your own family. Now you must be sentenced.
3. I have considered all the factors set out in section 55 of the Criminal Code Act 1997, including: the nature and seriousness of the offence and its consequences; the fact that you alone are to blame for it; and the need for the community to be protected from you. I have also considered the impact of the crime upon Mr Outerbridge's family. I have been helped in that by the victim impact statements.

4. I have considered the aggravating and mitigating factors in your case – those that make it more serious and those that make it less serious.
5. The aggravating factors are as follows:
  - (1) The ferocity of the assault. You inflicted 27 wounds. Three of them were serious. One or more of those serious wounds caused Mr Outerbridge’s death through loss of blood.
  - (2) The pain and suffering that Mr Outerbridge, who did not die immediately you stabbed him, must have experienced between the time of the attack and the time of his death.
  - (3) The fact that you tried to conceal your wrongdoing, and did so with a degree of method and deliberation.
    - i. After the stabbing you changed clothes and used a garbage bag to clear away bloody articles of clothing.
    - ii. You also dragged Mr Outerbridge, while he was still alive, to another location – no doubt because you thought it would take longer before he was discovered there. I am satisfied that at least one other person helped you to do this. As Mr Outerbridge told the emergency medical technician who first attended upon him: *“I have been stabbed, and these guys dragged me up here”*.
  - (4) Murder and violent knife crime, particularly the use of knives to inflict lethal violence, are prevalent in Bermuda. Eg there was another death by stabbing only a few weeks ago, on 23<sup>rd</sup> August. Your sentence should deter others from committing a crime of this nature.
6. I turn to the mitigating factors:
  - (1) You were 15 years old at the time. The law requires that I sentence you based on your age at the time of the offence, not on your age now. Although you were only 2 months short of your 16<sup>th</sup> birthday, you seem from the reports ordered by the court to have been quite a young and immature 15. In the eyes of the law you were still a child. The law deals with children and young persons who commit crimes, even very serious ones, less severely than it would if they were adults.
  - (2) You pleaded guilty at an early stage in the proceedings. I give you credit for that. You have thereby spared Mr Outerbridge’s family the ordeal of sitting through a trial and saved considerable court time and public money.

- (3) You have expressed remorse: to the social worker preparing the social enquiry report; in your written basis of plea; in the act of pleading guilty; and today in court. I accept that, to some extent at least, that remorse is genuine.
- (4) Although, as you were only 15 when you committed the offence, this factor doesn't carry much weight on these particular facts, you are of previous good character.
7. I am satisfied, having considered all other sanctions authorised by law, that I must impose a custodial sentence. In the case of a child convicted of murder, there is only 1 such sentence that I can pass. Rashaun Codrington, you are sentenced to detention during the Court's pleasure.
8. I pass that sentence under section 5 of the Young Offenders Act 1950, read in conjunction with section 5(1) of the Bermuda Constitution Order 1968.<sup>1</sup>
9. What it means is that you are sentenced to detention for an indefinite period. That period falls into 2 parts.
10. You must serve a minimum term before you are eligible for release on licence. This is in order to satisfy the requirements of retribution – giving you what you deserve for what you have done – and deterrence – deterring other people from doing the same. That is the first part of your sentence.<sup>2</sup>
11. I have taken into account all the aggravating and mitigating factors mentioned earlier. You will serve a minimum – and I emphasise a minimum – term of 7 years. That is equivalent to a determinate sentence of 21 years.<sup>3</sup>
12. However the Court must keep that term under review. If you make exceptional progress you can apply to the Court for it to be reduced.
13. Once that minimum term has been completed you can apply to be released on licence. But your release will not be automatic. The Parole Board will consider your growth and maturity and your best interests, but they will also consider whether you pose a continuing risk to the community. That is the second part of your sentence.
14. When and if you are released on licence, you will remain subject to recall into custody if you breach the terms of that licence for the rest of your life.

15. The sentence will run from the date of your arrest.

Dated this 5<sup>th</sup> day of September, 2013 \_\_\_\_\_

Hellman J

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<sup>1</sup> The Prosecution referred the Court to DPP v Mollison [2003] 2 AC 411, in which the Privy Council held that, under constitutions based on the Westminster model, judicial functions such as sentencing must be exercised by the judiciary and not the executive. Section 5 of the Young Offenders Act 1950 offends against this principle by providing that a child convicted of murder should be sentenced to detention “*during Her Majesty’s pleasure*”.

To bring that section into conformity with the Constitution, determination of the duration of the sentence must be a matter for the Court. This result can be achieved by applying section 5(1) of the Bermuda Constitution Order 1968. This provides that laws existing when the Constitution came into force, such as the Young Offenders Act, should be construed subject to such modifications as are necessary to bring them into conformity with the Constitution. Accordingly, “*during Her Majesty’s pleasure*” should be construed as meaning “*during the court’s pleasure*”.

<sup>2</sup> The Prosecution referred the Court to the position in England and Wales, where a judge when sentencing an offender to detention during Her Majesty’s pleasure is required by statute to state in open court a minimum term to be served for purposes of retribution and deterrence. See Practice Statement (Crime: Life Sentences) [2002] 1 WLR 1789 at para 20.

The Prosecution also referred the Court to various authorities on the point. In Ex p Venables, the House of Lords held that such a tariff was lawful, provided that it was provisional and reviewable. See 408 C – E (headnote). In Seepersad v AG of Trinidad and Tobago [2013] 1 AC 659 (at para 10) the Privy Council concurred. It emphasised that, irrespective of whether there is a minimum term, the progress and development of the detainee, as well as the requirements of punishment, must be kept under continuous review throughout the sentence.

The Venables case went on appeal to the European Court of Human Rights in V v UK (2000) 30 EHRR 121, where it was submitted that a tariff was in breach of the European Convention’s Article 3 prohibition against inhuman or degrading treatment or punishment. This prohibition is also to be found in section 3 of the Constitution of Bermuda. The European Court not only rejected this submission (at para 98), but stated (at para 100) that: “... *it cannot be excluded ... that an unjustifiable and persistent failure to fix a tariff, leaving the detainee in uncertainty over many years as to his future, might .... give rise to an issue under Article 3.*”

<sup>3</sup> The Prosecution noted that, as this was the first case in Bermuda where an offender fell to be sentenced under section 5 of the Young Offenders Act 1950, there was no local authority that was directly on point. However, for comparative purposes, the Prosecution referred the Court to section 70Q of the Criminal Code Act 1907, which provides that where an offender who was aged 16 or 17 years at the time of the commission of the offence is convicted of murder, and is sentenced to imprisonment for life, he shall not be eligible for release on licence until he has served 7 years. Although, as the Court pointed out, the Court of Appeal has held in Robinson [2009] Bda LR 40

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that a statutory minimum term for murder is unconstitutional, the Prosecution submitted that 7 years was nonetheless a helpful point of reference, particularly as Mr Codrington was aged 15 years and 10 months at the date of the offence. The Defence, however, submitted that section 70Q was of little assistance as at the material time Mr Codrington had not yet reached the age of 16, and that as Parliament had not included children within the scope of that section it had impliedly intended that they should not have to serve a minimum term of at least 7 years.

The Prosecution also referred the Court to various English authorities. Schedule 3 of the Criminal Justice Act 2003 provides at para 7 that if the offender was aged under 18 when he committed the offence the appropriate starting point, when determining the minimum term, is 12 years. The Practice Statement (Crime: Life Sentences) (see footnote no 2 above) explains at paras 23 – 24 that this figure is one-half of the normal determinate sentence which would have been imposed for the offence in the case of an adult if a life sentence had not been passed (ie 24 years). The figure reflects the fact that in England and Wales a defendant is eligible for release on licence after serving one half of a determinate sentence, not one third as in Bermuda. As the Court pointed out, the figures in the English authorities must therefore be approached with caution. Eg in Bermuda, an offender would only have to serve 8 years of a 24 year sentence before being eligible for release on licence.

In R v McLeod [2013] 1 Cr App R (S) 431 the Court of Appeal of England and Wales upheld a minimum term of 14 years imposed in conjunction with a sentence of detention at Her Majesty's Pleasure in a case of murder where a youth aged 15 stabbed another youth in the course of a dispute following a robbery. The Prosecution submitted that the aggravating factors were somewhat similar to those in the present case although the mitigating factors were far different. In particular, as the Court pointed out, in McLeod there was no plea of guilty.

In the present case, the Prosecution submitted that the minimum term should fall between 7 and 14 years; the Defence, that it should fall between 6 and 8 years.