In The Supreme Court of Bermuda

CRIMINAL JURISDICTION
2020 No: 27

BETWEEN:

THE QUEEN

And

TYSHAUN BROWN

RULING ON SENTENCE

Section 297A of the Criminal Code (Manslaughter by reason of Diminished Responsibility) Sentencing Guidelines

Sentencing Hearing Dates:	Wednesday 23 March 2022 – Thursday 24 March 2022 – Thursday 31 March 2022
Date of Ruling on Sentence:	Wednesday 06 April 2022
Counsel for the Crown:	Ms. Cindy Clarke, Director of Public Prosecutions
Counsel for the Accused:	Ms. Elizabeth Christopher, Christopher's

RULING of Shade Subair Williams J

Introduction

1. The Accused, Mr. Tyshaun Brown, appears before the Court for sentence, upon his guilty plea entered Wednesday 16 March 2022, to Count 1 on Indictment No. 27 of 2020 charging him with manslaughter, contrary to section 293 of the Criminal Code. The charge of manslaughter was accepted by the Crown on the ground of diminished responsibility as provided for by section 297A of the Criminal Code. Accordingly, the Crown did not proceed with Count 2 (murder) which was left on the file.

2. The facts of this case are dreadful and heart-wrenching. It entails the barbaric slaying of a beloved and adored 52 year old family man, who, on 7 July 2020, was senselessly butchered and mangled to death in an attack launched by his very own son, a young man soon approaching 28 years in age (D.O.B. 29 May 1994).

3. Over the course of these proceedings, this Court heard the sentencing submissions of the DPP, Ms. Cindy Clarke for the Crown and Ms. Elizabeth Christopher on behalf of the Accused. Those submissions were most ably made and well researched on both sides. For that, I am grateful to Counsel and thank them for their most valuable assistance.

4. On their overarching and competing positions, the Crown sought an immediate term of imprisonment to be fixed for a term between 25 and 35 years imprisonment. Defence Counsel, however, urged me to reject that range and to impose a fixed term sentence falling somewhere between 11 to 15 years of imprisonment.

Summary of the Facts

5. On the Summary of Evidence placed before the Court, it is stated that the Accused telephoned his sister, Ms. Shauntorri Franks, (also the daughter of the Deceased) at approximately 11:30pm on that fateful night of 7 July 2020. The Accused informed her of what he was about to do, repeatedly stating '…*I'm going to kill Daddy*…" as he and his father argued from inside the Deceased's car parked outside of the residence of the Accused's mother, Ms. Margaret Moore. The Accused's sister, Ms. Franks, hearing the ensuing dispute, warned her brother to 'just walk away'. Instead, he persisted. The argument continued onto the residence porch at which point the Accused punched his father, knocking him off the porch and onto the ground. It did not end there; the Accused continued to punch his father on several more occasions. This did not draw an end to the attack on the Deceased. The Accused at that point went inside of the residence and told his panic-stricken mother that he was going to get a knife and kill his father. He told his mother that his father deserved to die.

6. Throughout this violent ordeal, Ms. Franks remained on the phone. In her Victim Impact Statement ("VIS"), she explained that she could hear her brother and father fighting in the background. The Accused subsequently handed his phone to his mother and directed her to talk to his sister, Ms. Franks. Having taken the phone, Ms. Moore urged Ms. Franks to attend the residence which she did, in company with her granny and aunty. It was also Ms. Moore, who made the 911 report to police. In the Summary of Evidence, it is said that Ms. Moore was "*distraught to the point of hysteria, making it difficult for the 911 operator to understand the exact address of the location of this disturbance*."

7. This Court was made to understand that the Accused retrieved a knife from an outside location of a neighbouring property and returned to the porch area where he stabbed his father repeatedly. The Deceased, now beaten and stabbed, mustered the energy to run away from the Accused. However, the Accused chased after his staggering father who was holding on to himself and leaning forward as he ran up a hill desperately seeking refuge. At this point, the Accused was confronted by a concerned neighbor to which the Accused responded with the knife in his hand; "*Mr. I would 'effing'* [fucking] *kill you*".

8. Another 911 caller reported that a chubby shirtless male was outside #9 Cedar Hill banging on the door. When police arrived at this address, they discovered the Accused covered in blood with a knife in his hands shouting and ranting that he had killed his own father and that he deserved 'life' [a life sentence].

9. After his arrest at the crime scene, the Accused called out to his mother and said; "*Sorry Mama, he deserved it. Take care of my baby, I'm sorry*." He said to his granny in the presence of the police officers; "*I did it Granny, its family matters, I did it, yea I killed my Daddy, he deserved it*." Later at Hamilton Police Station the custody sergeant asked the Accused if he knew why he was in custody to which he replied; "*I am here for killing my daddy. I know I'm doing life, I deserve it*."

10. The Accused was pronounced dead upon arrival to King Edward Memorial Hospital ("KEMH"). He suffered 26 separate stab wounds inflicted about his face, chest, arms, abdomen, left hand, right thigh and left leg. It is reported that many of the stab wounds penetrated his peritoneal cavity (a space within the abdomen where the stomach and other organs such as the spleen and liver are located). A single wound penetrated his heart and that a listed cause of his death was a form of shock termed hypovolemic shock, a fatal condition which disables the heart from pumping blood to the rest of the body, onset by severe blood loss.

11. When the defendant was examined by an on-call physician, he was observed to have only a cut on his right index finger. Acknowledging his injury, he said; "*Got these injuries from killing my daddy…I used a kitchen household knife*."

12. While it was not expressly stated in the Summary of Evidence, there is no dispute between the Crown and the Defence that the Accused had consumed a notable amount of alcohol on the night of 7 July, leading up to the killing.

The Accused Mental Health and Criminal History

13. Counsel for both sides relied on a report dated 14 January 2021 from Dr. Richard Sebastian Henagulph, a registered medical practitioner specializing in forensic psychiatry. Dr. Henagulph, known well to Courts of this jurisdiction for his expertise, was the Accused's medical officer during his detention at the Mid-Atlantic Wellness Institute after the killing in July 2020. Dr. Henagulph was also the Accused's visiting psychiatrist during his remand at Westgate Correctional Facility and interviewed him on 18 November 2020 in preparation for the making of his report for this Court.

14. Summarising his understanding from the Accused of the facts related to the present offence, Dr. Henagulph stated in his report [43-44]:

"*43. Mr. Brown told me that on the day of the offence he had been at cricket training in Somerset. He reported that he had a beer with his teammates after training. After this his father picked him up with a friend of his father's and they all went for a drink together. He reported consuming two or three cups of Bacardi rum and Coke and said that his father had a few drinks as well. His father then drove him home.*

44. He said an argument began between them in the car. Mr. Brown said it was "about [his] past – how [his] father's ex-wife didn't like [him]. And that [his] father wasn't around much." He said that they had similar arguments in the past but they had been verbal not physical. He said that they continued arguing once outside of the car and he remembers punching his father but is not sure why he did so. He said the next thing he remembered was standing over his father with a knife and dropping the knife when police arrived. He said they arrested him without a struggle and he next remembers being in the police station. He said that he told the police doctor about his suicidal ideas which lead to his admission to MWI for further assessment.

15. On the subject of his relationship with his father, Dr. Henagulph said [45-47] and [72-73] :

45. On direct questioning he reported never having been in physical altercation with his father in the past.

46. He also spontaneously mentioned, as also documented in his mother's witness statement, that he used to pretend that his father had visited him at school when he had not.

47. I noted that while recounting the circumstances of the alleged offence, there was little in the way of emotion or tearfulness from Mr. Brown, which was in contrast to his description of the circumstances around his sister's death…

…

72. …When asked about his relationship with his father he said it was generally a good and close relationship.

73. Overall Mr. Brown presented as calm and cooperative on the ward if generally subdued. He reported some difficulties sleeping as he said, for example on 13th July 2020, that when he closed his eyes he could see his father's shadow. There were episodes of tearfulness during which he expressed remorse at what had happened but also said he did not know why and or exactly what had happened. "

16. Dr. Henagulph reported that the Accused has a significant history of contact with mental health services provided to him during his years as a child and adolescent in response to his trauma resulting from an 8 August 2003 road traffic accident whereby his sister was tragically killed by the impact of a passing car. At that time, the Accused was only 8 years of age and his sister was 6 years old. He and his sister were getting off the bus hand in hand and were about to cross the road. However, the Accused heeded to the bus driver's warning for him to step back while his sister proceeded, fatally so.

17. Ms. Christopher explained that the Accused, throughout his life thereafter, carried the emotional burden of reconciling his feelings of guilt and sadness with his anger that his sister was killed by a reckless white female driver who escaped a full and proper penalty for her culpability. Dr. Henagulph wrote [para 27]:

"27. *He said that at the time of her birthday, 26th February, he still finds it emotionally extremely difficult. He said previously he would go drinking alcohol and "get into trouble", whereas more recently he said he would just wake up crying. He reported other times where he has re-experiencing phenomena which he described as like "a replay of the accident". If he looks at old pictures of her then he immediately starts crying. He said he does not share any of this with others in his family. He went on to describe symptoms of avoidance for example*

that he would not go on buses, would avoid the area of Cedar Hill where the accident happened and did not like being inside an ambulance. He did say that these difficulties had been less intense in more recent years."

18. Dr. Henagulph shared that it was his information that following the loss of the Accused's sister, the Accused was referred to Child and Adolescent Services ("CAS") in February 2004. This was precipitated by reports that the Accused had not adjusted to the reality of his sister's death. Dr. Henagulph said [para 28]:

    "…*The family reported that he had been "acting out" at school and that before this there had been no such problems. He was very close to being suspended from school. Behaviours reported included refusing to do school work, episodic verbal and physical aggression towards teachers and students that included spitting, kicking, running away, usually sexually explicit language and making significant comments of self-harm. On one occasion he chased other students with a screwdriver and required restraint by teachers. His mother reported oppositional behavior at home but no violence or self-harm. He had returned to bed-wetting, having been dry at night from the age of 3 ½. He was diagnosed with bereavement reaction with no evidence of pathological grief [prolonged grief disorder] or psychiatric symptoms at that time*."

19. This was the background to the Accused's subsequent participation in a series of 23 psychotherapy sessions with Dr. Sandy De Silva between February 2004 and March 2005. His discharge is said to have come about at the point when it became evident that the concerns and reports of behavioural concerns ceased.

20. However, on 25 January 2006 another referral was made for the Accused to be reviewed by CAS. This referral was made on account of behavioural concerns at school and at home. On one given example, the Accused tossed a fellow student into the air, causing that student to suffer neck injuries as he landed on his head. Consequently, the Accused was suspended for three days. Dr. Henagulph disclosed that it was thought that the Accused behavioural outbreaks were mainly aggravated by his mother's pending marriage to a man who was not his father. Dr. Henagulph stated that the Accused was diagnosed with an adjustment disorder and was directed to re-engage with Dr. De Silva. However, this treatment was prematurely ended because the Accused did not return to Dr. De Silva after the third session. At this point in the time, the Accused would have been of a young adolescent age.

21. For a third time, Mr. Brown was referred to CAS in October 2006 for reasons similar to those underlying his earlier referral in January of that same year. Dr. De Silva noted in his assessment that the Accused was "*unable to control his impulses when provoked. He copes with this by*

reacting aggressively towards others as a way to defend himself. This further reinforces his low self-esteem, and thus his ability to make meaningful friendships." Dr. Henagulph also shared that Dr. De Silva also noted of her diagnosis in 'Axis IV' [Psychosocial and Environmental Problems]: "*Death of half-sister. Lack of contact with his biological father*." At this stage of the Accused's life he was diagnosed with "Oppositional Defiant Disorder". Accordingly, he engaged in 14 sessions of psychotherapy with Dr. De Silva between November 2006 and April 2008. By the end of that period, the Accused was nearing 14 years in age and had exhibited significant progress demonstrated by his improved grades and behavior. He was thus properly discharged from his treatment care with Dr. De Silva.

22. A fourth referral was made to CAS in April 2011 on the grounds of the Accused's display of signs of depression. Soon approaching his 16th birthday, the Accused had been suspended for "acting out" in his classroom and was facing a possible further suspension following an angry outburst in relation to his strained relationship with his mother. It was reported that on that occasion he punched a filing cabinet. Dr. Henagulph wrote in his report that the Accused was experiencing suicidal thoughts but had no plans to execute those ideas. Further, the Accused Court history began during this period. Notwithstanding, some three months later, the Accused's mother reported that the Accused had secured employment and no longer needed input from CAS.

23. The Court was also made to understand from Dr. Henagulph's report that as an adult, the Accused had never again received any psychiatric or mental health treatment or care, prior to the killing of his father. So, for an approximate 9 year period between April 2011 (when the Accused was one month shy of 16 years old) and July 2020 (when the Accused was 26 years old), the he bypassed treatment.

24. During that 9 year period, the Accused became a known offender in the criminal justice system. On 6 August 2013 when the Accused was 19 years of age he was convicted and fined in the Magistrates' Court for having used offensive words in a public place. Two years later on 7 May 2015, the Accused was again convicted for the use of offensive words in a public place. On that occasion he was also convicted for the offence of violently resisting arrest. His sentence was one of a 12 month discharge which entailed a condition that he refrain from the use of drugs and alcohol and that he submit himself for and assessment in respect of his needs for counseling. Four years thereafter, on 6 June 2019 when the Accused was a 25 year old man, he was convicted for having assaulted a police officer and again violently resisting arrest. Again, the Accused was given the benefit of a conditional discharge. On this occasion, the magistrate directed for the conditional discharge to run over a 3 year term to expire on 6 June 2022. This means that on 7 July 2020 when the present offence was committed, the Accused was in breach of the conditional discharge ordered by the Magistrates Court only one year prior on 6 June 2019.

25. Dr. Henagulph discussed the Accused's previous criminal record with him. The Accused explained that his use of offensive words for his 2013 conviction was committed when he had been drinking heavily. He also connected his criminal behavior to his trauma from the death of his sister. This was consistent with the submissions made by his Counsel in these sentencing proceedings before me. Addressing the 2015 conviction, the Accused told Dr. Henagulph that this was again triggered by his grief for his deceased sister as the offence occurred the weekend after what would have been her birthday. Also on this occasion, the Accused acknowledged that he had consumed excessive alcohol. This background to the offence was repeated by Ms. Christopher during her sentencing submissions. Additionally, Dr. Henagulph reported that the Accused informed him that he had been convicted for numerous traffic related offences, one of which arose from an accident in which he was involved while driving impaired by alcohol. The accused told Dr. Henagulph that he thought that he might have been charged with grievous bodily harm on that occasion.

26. Expanding on his alcohol use, the Accused informed Dr. Henagulph that since he was 13-14 years old, he consumed alcohol on most occasions and one occasion attempted or seriously contemplated suicide as he wrapped several bungee cords around his neck. Dr. Henagulph reported [41]:

    "*…He said when he drank he tended to drink "alot". He said more recently he had been doing less drinking but still had occasional heavy binges in which he would experience loss of memory. He admitted to occasional cannabis use and that he had recently been using it more frequently as a result of him using less alcohol. He said he would use cannabis whenever he was feeling bad or down and that he had previously used alcohol on these occasions*."

27. During his 10 July 2020 interview with Dr. Henagulph, the Accused admitted his alcohol use on the night of the killing and said that after his argument with his father he "*blacked out*".

28. Dr. Henagulph reported that he also examined the Accused on 13 July 2020 at which time his "*overall impression was that there was no evidence of a severe mental disorder, that he was experiencing an acute stress reaction and that this was resolving*" [74]. Dr. Henagulph said that the Accused was not prescribed any regular psychiatric medication and was discharged to police custody later that same day.

29. On 27 July 2020, Dr. Henagulph visited the Accused at Westgate Correctional Facility. The Accused reported that he had been awaking multiple times at night. However, when Dr. Henagulph proposed prescribing a sleeping tablet, the Accused declined the offer and reportedly stated that he was aware of how to seek help and would do so if he needed it.

Disclosing his opinions formed from that visit, Dr. Henagulph stated; *"My impression was of no acute mental illness and I was to review him in six weeks' time…*"

30. Over the course of subsequent visits, the Accused agreed to take sleeping medication having reported serial nightmares and poor sleeping habits. Dr. Henagulph opined that these factors were not symptomatic of Post-Traumatic Stress Disorder in relation to the offence itself. On 4 November 2020 the Accused reported that he was finally sleeping well throughout the night. Dr. Henagulph said that the Accused also spoke about "*chronic issues related to the death of his sister such as having re-experiencing events at the time of her birthday in February.*" Dr. Henagulph added; "*He further explained that around this anniversary he cries and drinks alcohol. He was wondering how he would be able to cope being in prison during this time*."

31. Summarising his diagnostic conclusions, Dr. Henagulph opined [paras 5-6]:

"*5. I am of the opinion that the major contributing factors to Mr. Brown's behavior at the relevant time were mental disorders specifically associated with stress, exacerbated by alcohol.*

6. I am of the opinion that the above factors constitute an abnormality of mind and, as a direct consequence of this abnormality. Mr. Brown should be considered for a partial defence of diminished responsibility."

32. In more detail, Dr. Henagulph outlined his diagnosis [para 7, page 20]:

"*Although I have stated above that, in my opinion, Mr. Brown does not suffer from a severe and enduring mental illness I am of the opinion that he suffers from a combination of sub-threshold disorders which likely combined to reduce his culpability for the offence.*"

33. Dr. Henagulph continued [paras 18-24, pages 23-24]:

"*18. As to the nature of Mr. Brown's mental state at the material time, I have noted I could find no evidence of a severe and enduring mental disorder such as schizophrenia, bipolar disorder or severe depression.*

19. I am of the opinion however that he was suffering with what would come under the general subcategory of the World Health Organisation's International Classification of Diseases, Version 11 (ICD-11) chapter 6 – Mental, behavioural or neurodevelopmental disorders, namely that of '<u>disorders specifically associated with stress</u>'. These are mental disorders directly related to exposure to a stressful or traumatic event. The identifiable traumatic stressor is a necessary but not sufficient causal factor…Under this heading and of particular

relevance to Mr. Brown's case are post-traumatic stress disorder (PTSD, code 6B40), and prolonged grief disorder (PGD, code 6B42.)

20. PTSD may develop from an exposure to an extremely threatening or horrific event or a series of events. There are three main areas which characterize the fully developed disorder; these include 1) re-experiencing the traumatic event in the form of vivid memories, flashbacks or nightmares, 2) avoidance of thoughts or memories of the event(s) or avoidance of activities, situations or people reminiscent of the events, and 3) persistent perceptions of heightened current threats, for example hypervigilence or an enhanced startle reaction to stimuli such as unexpected noises. Symptoms persist for at least several weeks and cause significant impairment in personal, family, social, educational, occupational or other important areas of functioning.

21. PGD is a disturbance which, following the death of a partner, parent, child, or other person close to the bereaved, there is a persistent and pervasive grief response characterized by longing for the deceased or persistent preoccupation with the deceased, accompanied by intense emotional pain such as sadness, guilt, anger, denial, blame along with difficulty accepting the death, feeling one has lost part of oneself, an inability to experience positive mood, feeling of emotional numbness, and associated difficulty engaging with social or other activities. The response persists for an atypically long period, usually more than six months, and exceeds the expected social cultural and religious norms for the individual's culture and context.

22. In my opinion Mr. Brown does not fully meet the criteria for a clinical diagnosis of PTSD. He clearly experienced a highly traumatic event when he was 10 years old which impacted upon his behavior and functioning when a child and adolescent, resulting in several periods of psychological treatment. As far as current symptomology, he did report to me continuing re-experiencing events in the form of vivid flashbacks to the event, particularly around the time of his sister's birthday. He also described avoidance phenomena in the form of avoiding the area where the accident happened and not getting into ambulances (this also appears to have possibly precipitated the offense for which he was convicted in June 2019.) However I was unable to elicit or observe during my numerous encounters with Mr. Brown substantial evidence of hypervigilance or an enhanced startle reaction. Although he did report some disturbances in sleep I did not judge these to be of a threshold warranting this limb of the diagnosis, at best I would judge him to experiencing PTSD of a mild degree of severity at the present time.

23. In my opinion a more clinically appropriate diagnosis would be that of PGD. This appears to have developed following the death of his sister, due to him being a witness of the accident as well as the prolonged nature of the court case, possibly further complicated by the fact there

appears to have been a civil claim for psychiatric injury…This would have contributed to the period during which closure would normally have occurred. He told me of continuing episodes of emotional pain leading to tearfulness triggered by reminders of his sister including photographs of her and also at the time of her birthday; I note that even discussing the accident with me while in prison resulted in an episode of tearfulness. I also note a general preoccupation with the event by the family in general which would have further prolonged this condition. While difficult to quantify, a review of available psychological instruments indicates that Mr. Brown would, at the present time, be unlikely to score above the mild to moderate range, although in previous years would have likely experienced this disorder from a moderate to severe degree.

24. As to the role of alcohol in the alleged defense, while I believe it was a contributing factor an enabler of an emotional state in which the defendant began to experience emotional pain related to his sister's death and this was further exacerbated by him arguing with his father about his perceived feelings of abandonment by his father when younger it was not in my opinion a major factor in the offense. Rather I see it as (and at which time he would have been going through the emotional pain of his sister's death to a more severe degree).

25. Overall I am of the opinion that the major contributing factors to Mr. Brown's behavior were a combination of subthreshold/mild PTSD and mild-moderate PGD, exacerbated by intoxication with alcohol. It was these factors which lead to a common emotional verbal argument escalating to an alleged homicide."

34. Concluding his report, Dr. Henangulph wrote:

"*Disposal*

28. While I have stated above that I believe the defendant was in either a state of mental disease or suffering from an abnormality of mind at the relevant time, I am not of the opinion that his mental disorder is of a nature or degree that would normally warrant hospital treatment, for example under the Mental Health Act 1968.

29. The treatment the defendant requires would, but for the alleged offence, normally be provided on an outpatient basis and would consist of psychological therapy to address the past trauma and grief, as well as comprehensive treatment of his alcohol use in order to facilitate long-term abstinence. Should the defendant receive disposal by the way of imprisonment I believe such treatment can be made available in this environment and can be continued on any future release date under conditions of supervision.

Future risk

30. Without suitable treatments I am of the opinion that there would be a chance of the defendant engaging in similar, although not necessarily fatal, behaviours particularly under the influence of alcohol. Likewise, without intervention, he would remain at an elevated risk of attempting suicide in the future…"

The Law

The Bermuda Statutory Framework

35. Governed by statutory provisions of the Criminal Code, manslaughter under Bermuda law make take the form of:

(i) Negligence (section 294),
(ii) Provocation (section 295),
(iii) Killing by the use of excessive force where some force is lawful (section 296),
(iv) Suicide pacts (section 297) and
(v) Diminished Responsibility (section 297A),

36. Section 297A(1) provides:

"*Where a person unlawfully kills or is a party to that killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing*."

37. Pursuant to section 298 of the Criminal Code, any person who commits the offence of manslaughter "*is liable to imprisonment for life*" as a maximum penalty. This is to be distinguished from the mandatory language employed under section 288 for the punishment of murder which provides: "*a person who commits the offence of murder shall be sentenced to imprisonment for life.*"

The Statutory Position in the UK

Offenders convicted on or after 1 December 2020:
The Sentencing Act 2020: Schedule 19 Offences (Specified Offences)

38. Effective 1 December 2020, the Sentencing Act 2020 (the "Sentencing Code") repealed a significant portion of the sentencing provisions of the Criminal Justice Act 2003 (the "CJA 2003") primarily for the purpose of consolidating the legislative provisions relevant to the sentencing of offenders. Prior to the coming into force of the Sentencing Code, sentencing provisions in the UK were scattered between the Powers of Criminal Courts (Sentencing) Act 2000, the CJA 2003 and the Criminal Justice and Immigration Act 2008.

39. Manslaughter is now appears under Schedule 19 of the Sentencing Code, as read with section 307. Schedule 19 offences are specified offences carrying a maximum sentence on indictment of imprisonment for life. Pursuant to section 274(1)(b) of the Sentencing Code a Schedule 19 offence applies to section 274(3) which provides: "*If the court considers that the seriousness of …the offence… is such as to justify the imposition of a sentence of custody for life, the court must impose a sentence of custody for life under section 272*." Section 272(2)(a) provides: "*The court must sentence the offender to custody for life if…the offence is punishable in the case of a person aged 21 or over with imprisonment for life, and the court considers that a sentence for life would be appropriate*…" Pursuant to section 285(1)(b), section 285 of the Sentencing Code also applies to Schedule 19 offences i.e. manslaughter. The statutory wording under section 285(3) mirrors section 274(3) requiring the Court to impose a life sentence if the seriousness of the offence justifies it to do so.

Offenders convicted on or prior to 1 December 2020:
The CJA 2003: Part 1 Schedule 15 Offences (Specified Violent Offences)

40. Sections 222 to 229 of the CJA 2003 were repealed by the Sentencing Code. However, a review of those repealed provisions allows for a more in-depth understanding of the English cases involving offenders who were convicted prior to 1 December 2020.

41. Under Chapter 5 (Dangerous Offenders) of Part 12 of the CJA 2003, section 224(3) defined a "*specified violent offence*" as an offence listed under Part 1 Schedule 15. Manslaughter was listed under Part 1 Schedule 15. For the purpose of section 224(1)-(2) of the CJA 2003, manslaughter qualified as a "*serious offence*" as it was both a "*specified violent offence*" and punishable by life imprisonment for persons of 18 years of age or more. (Section 224A applied to life sentences for second listed offences.)

42. Section 225(1) of the CJA 2003 applied to persons aged 18 or over who were convicted of a "*serious offence*" so long as the Court was of the opinion that there was a significant risk of the offender causing serious harm to members of the public, occasioned by the offender's commission of further "*specified offences*".

43. For the purpose assessing the dangerousness and future risk posed by the offender so to determine whether section 225(1) applied, the Court was guided by the criteria outlined under section 229 of the CJA 2003. In the case of an adult offender who had not been previously convicted of any other "*relevant offence*", the Court was required to "*take into account all such information as* [was] *available to it about the nature and circumstances of the offence*". Additionally, the Court had a discretionary power to take into account any information which was before it about any pattern of behaviour of which the offence formed part. Further, the Court was entitled to take into account any information about the offender which was before it.

44. Where the Court was satisfied that section 225 applied, under section 225(2) of the CJA 2003 it was open to the Court to impose either a life sentence or a sentence of imprisonment for public protection. If proceeding under section 225(2)(b), the Court was under an obligation to impose a sentence of life imprisonment where it considered that the seriousness of the manslaughter justified a life sentence. If the Court did not see fit to impose a life sentence under section 225(2)(b) then it was obliged to impose an indeterminate sentence of imprisonment for public protection if section 225 applied in accordance with section 225(1).

The UK Sentencing Guidelines

45. Sentencing guidelines may provide some assistance to the Court, particularly in cases where the judge has first ruled out the appropriateness of a life sentence. In the UK the following distinct classes of manslaughter are recognized by sentencing guidelines:

(i) Unlawful Act Manslaughter;
(ii) Gross Negligence Manslaughter;
(iii) Manslaughter by reason of loss of control and
(iv) Manslaughter by reason of diminished responsibility

46. Both Ms. Clarke and Ms. Christopher referred to the sentencing guidelines which specifically apply to manslaughter by reason of diminished responsibility (the "MDR Guidelines"). The MDR Guidelines refer to section 2 of the UK Common Law and Homicide Act 1957 which is, in substantial terms, identical to section 297A(1) of the Criminal Code in Bermuda, insofar as it applies to offenders who at the material point were suffering from an abnormality of mind which substantially impaired that offender's mental responsibility for the commission of the offence.

47. The MDR Guidelines commend a multiple-step approach to determining the appropriate sentence for an offender convicted of manslaughter by reason of diminished responsibility.

However, the step by step process for determining a fixed period of imprisonment is secondary to the Court's assessment as to whether or not a life sentence ought to be imposed.

48. 'Step One' requires the Court to assess whether the degree of responsibility retained was high, medium or lower. In doing so, the Court should consider whether the accused has voluntarily contributed to the seriousness of the mental disorder. An obvious example is drug and alcohol abuse without any evidence of an attempt by the offender to submit himself to rehabilitation or any other identifiable appropriate treatment.

49. 'Step Two' suggests that the assessment of the degree of responsibility is a useful guide in marking out the starting range of sentence. The high starting point is 24 years imprisonment for cases involving a single offence of manslaughter resulting in a single fatality. By the end of the assessment on sentence, that starting point should range somewhere between 15 and 40 years imprisonment. The medium starting point is 15 years relative to a 10 to 25 year sentence range. The lower starting point is stated to be 7 years which falls in the 3 to 12 year range of imprisonment.

50. Some of the non-statutory factors which would result in an upward or downward adjustment of these starting points are listed as follows:

    - History of violence or abuse towards victim by offender
    - Involvement of other(s) through coercion, intimidation or exploitation
    - Significant mental or physical suffering caused to the deceased
    - Victim particularly vulnerable due to age or disability
    - Victim was providing a public service or performing a public duty at the time of the offence
    - Commission of offence whilst under the influence of alcohol or drugs (the extent to which the mental disorder has an effect on offender's ability to make informed judgments or exercise self-control will be a relevant consideration in deciding how much weight to attach to this factor)
    - A significant degree of planning or premeditation
    - Offence involved use of a weapon
    - Others put at risk of harm by the offending
    - Actions after the event (including but not limited to attempts to cover up/conceal evidence)
    - Concealment, destruction, defilement or dismemberment of the body
    - Blame wrongly placed on other(s)
    - Offence committed on licence or post sentence supervision or while subject to court order(s)

51. ‘Step 3’ requires the Court to consider the dangerousness provisions which under section 229 of the CJA 2003 in order to assess whether there is a significant risk to members of the public of serious harm occasioned by the commission of further specified offences which would carry a sentence of life imprisonment. Accordingly, the Court must take into account all of the information available to it about the nature and circumstances of the offence. Additionally, the Court is entitled to take into account all information available to it about the nature and circumstances of any other offences of which the offender has been convicted by any other court of any other jurisdiction. This includes an assessment as to whether an offender has shown a pattern of like behavior.

52. ‘Step 4’ requires the Court to consider disposals under the Mental Health Act 1983 including section 45A and the importance of a “penal element”. A direction pursuant to section 45A may entail special restrictions as set out in section 41, which is otherwise known as a “limitation direction”.

53. ‘Step 5’ requires the Court to consider whether the sentence should be adjusted to meet the overall sentencing objectives of the Court and the requirement for proportionality. Here, relevant factors will include the psychiatric evidence and the regime on release. Further, it is stated that an adjustment may require a departure from a sentence range established under ‘Step 2’.

54. ‘Step 6’ and ‘Step 7’ recognize the credit to be given for a guilty plea and any assistance provided to the Crown in the course of an investigation and or prosecution.

The Need to Avoid Double Counting the Effect

55. ‘Step One’ of the Manslaughter Definitive Guideline, effective since 1 November 2018, (the “MD Guideline”) applies to manslaughter cases in general and serves to assist the Court in determining the level of culpability that may attach to an offender’s conduct for manslaughter cases in general. The below factors are said to indicate high culpability :

    (i) Death was caused in the course of an unlawful act which involved an intention by the offender to cause harm falling just short of GBH;

    (ii) Death was caused in the course of an unlawful act which carried a high risk of death or GBH which was or ought to have been obvious to the offender;

    (iii) Death was caused in the course of committing or escaping from a serious offence in which the offender played more than a minor role

(iv) *Concealment, destruction, destruction, defilement or dismemberment of the body (where not separately charged)*

56. According to the MD Guideline, an extreme character of one or more of the above factors or the presence of a combination of the above factors is an indication of "very high culpability." Notably, however, a "mental disorder or learning disability" is listed as a factor reducing the seriousness of the offence or reflecting personal mitigation. This is to be contrasted to the DR Guidelines under which it is a given that the offender's responsibility was diminished by a mental disorder. Thus, in cases of manslaughter by diminished responsibility, the Court is not concerned with whether there is a presence of a mental disorder but instead the extent to which the offender's responsibility was diminished.

Relevant Bermuda Case Law

57. The Bermuda Court of Appeal in *Gary Cooper v R* [1991] Bda LR 12 upheld a sentence of life imprisonment passed on the appellant by Ward J (as he then was) in respect of a guilty plea for manslaughter on the ground of diminished responsibility. The facts of the case were succinctly summarised by the Court of Appeal as follows:

"*The appellant lived with Nancie Marie Martin (also known as Nancie Marie Majors) at 1 Fork Lane, Southampton. She had a daughter Shakia, aged 14 by a previous marriage and a son Zico, whose father is the appellant. They all lived at Fork Lane.*

The association of the appellant and Nancie Major was a tragic and stormy affair. As Dr. Richard Lament observed in his psychiatric report to the court:

'Mr. Cooper's relationship with Nancie Majors was characterized by love, explosive violence, jealousy, over-protective concern and mutual accusations of infidelity.'

Mrs. Majors worked as a room service waitress at Marriott Castle Harbour Hotel. On Friday 13th October, 1989 as a result of a phone call from the appellant, she left work at around 9:00p.m., earlier than she normally would. On entering her apartment in Southampton she met a neighbour who told her that she and the appellant had been doing drugs and that he had gone out to purchase more drugs for her. Ms. Majors became upset and immediately left her house and went to the home of a friend nearby, one Ms. Salters. From there she telephoned the appellant at their home and had a conversation with him concerning the presence of the neighbour in her home and his drug taking. After a heated conversation she informed the appellant that she would be at her mother's house. She later left for 4 Spice Berry Lane, Warwick, where the Majors family lived. As a result of the conversation, the appellant left his home and walked to the residence of the Majors.

When the appellant arrived there Ms. Majors was speaking on the telephone. The appellant entered without knocking, grabbed Ms. Majors from behind as she was in the front living room and commenced stabbing her repeatedly with a six inch blade 'Rambo' style knife which he had brought with him to the house: this knife had a wide blade which is straight on one edge and jagged on the other.

The attack was—as the Learned Judge described it—'brutal and vicious'. He inflicted nineteen stab wounds on his victim, before he drove off, leaving her to die from shock and hemorrhage resulting from the multiple stab wounds."

58. In that case the appellant was diagnosed with a Borderline Personality Disorder and the expert opinion before the Court was that his condition had endured at least 20 years leading up to the commission of the offence. The Court also had expert evidence before it disclosing that approximately 5 years of psychiatric treatment would likely be necessary before the appellant might no longer be considered likely to reoffend and be a danger or risk to society.

59. After citing various authorities showing the sentencing approach by English and Scottish Courts Da Costa, A/P stated in the judgment of the full Court that the rational for the sentence in both systems is the same as in Bermuda (citing *Hernando v R* [1990] Bda LR 17 in which the expert evidence was that Mr. Hernando "*should* [not] *be regarded as being a danger to anyone other than himself and the probability of him ever committing a similar offence or aggressive act* [was] *very low*"). Da Costa, A/P found [22]:

"*…If a sentence of life imprisonment is imposed, when the circumstances warrant it the prisoner while in prison would have his mental and physical treatment carefully considered and if necessary, ameliorative treatment would be given to him. Further his case [would] be reviewed from time to time by the authorities who have power to control treatment and eventually order release*."

60. In dismissing the appeal against sentence (i.e. upholding the life sentence) the Court of Appeal thought it befitting to use the same concluding words as those used by Mustill L.J. in Adrian Paul Woolaston (1986) 8 Cr. App. R. (S) at p. 364:

"*On any view, this is a sad case. It is a sad case for the appellant because on any view of the appropriate level of the sentence, he would be bound to spend a long period of time in prison. However, it is also a sad case for the deceased, someone who is occasionally overlooked in cases of this kind. The interests of those two parties and the interests of society as a whole have to be reflected in any sentence passed on an occasion like this.*

We have done our best to approach the matter entirely afresh and to weigh up those factors in an appropriate manner. At the end of the day, we find ourselves unable t disagree with the assessment which the learned judge made. It would be unsatisfactory for us to say simply that

we are not satisfied that the learned judge erred in principle. We think it better to express what is our own opinion, namely, that the sentence imposed by the learned judge was right."

61. Ms. Christopher referred me to the Court of Appeal's judgment in *R v Randy Burgess* [2000] Bda LR 12, a case of no real value to the present proceedings as the issue of diminished responsibility did not arise in respect of the manslaughter conviction. Further, in the sentencing of that case, Ward CJ (as he then was) had not been referred to section 298 of the Criminal Code which provided for a life sentence as the maximum penalty. Instead, he sentenced Mr. Burgess on the misguided notion that the maximum penalty was 20 years imprisonment. The Court of Appeal, having described the killing of the deceased as a "*brutal vicious act of savage butchery*" in a moment of "*frenzied jealousy*", dismissed the appeal against the sentence of 14 years.

Persuasive UK Case Law

62. Ms. Clarke cited the judgment of the Lord Chief Justice in *R v Wood* [2009] EWCA Crim 651, where the English Court of Appeal quashed the appellant's conviction for murder and substituted a conviction for manslaughter on the grounds of diminished responsibility. In that case, Mr. Francis Ryan, the deceased, was murdered under circumstances the Court described as an "extreme ferocity" in his home, leaving him with no less than 53 external injuries to his head. He was attacked in two different rooms of the house which the appellant, Mr. Wood ransacked. Like Mr. Amon Brown in this case, the deceased in *R v Wood* tried to escape his assailant. Notably, this case had elements of a hate crime in that the deceased was gay and the appellant told the police during interview that he hated "gays". Also, the level of premeditation in this case appears to be more serious than the present case in that the main weapon used in the attack was a meat cleaver which the appellant armed himself with before attending the deceased's residence.

63. Mr. Wood was approaching 50 years of age at the time of his appeal and was a man with a lengthy criminal history for dishonesty and violent offences. The killing of the deceased in his case occurred shortly after his most recent offence of carrying an offensive weapon and causing criminal damage. In the judgment of the Court of Appeal, a quote from a report of a forensic psychiatrist provided; "…although he is not violent on a regular basis, he has the ability to cause serious harm in the context of inter-personal conflict and especially when he (is) under the influence of alcohol. His history of carrying knives is certainly an additional risk factor". It was also reported that although the appellant was not deemed to pose "an indiscriminate risk of violence on a day-to-day basis", if he were to offend in the future, he could pose a "significant risk" of "substantial harm" if he were to resume his previous lifestyle which included alcohol consumption.

64. The Crown emphasized that *R v Wood* compares to the present case before me in the sense that the striking feature of both cases is the appellants' continual intention to kill which was evident up until the death of both victims. (In the present case, the Accused expressly confirmed his intention to kill his father. Those expression were repeated during the immediate after-math of the attack.)

65. Before substituting the sentence for manslaughter, the Court of Appeal reminded itself; "…*our decision must proceed on the basis that the appellant was suffering from abnormality of mind which substantially impaired his mental responsibility for acts in doing the killing*." That abnormality arose from alcohol dependency syndrome." The Lord Chief Justice noted; "*The submissions by Mr. Malcolm Bishop QC on his behalf sensibly concentrated on the proposition that the sentence must reflect the acknowledged diminution of his client's mental responsibilities for his actions*." On Mr. Bishop QC's submissions, it was emphasized that the Court should focus on the extent to which the offender is responsible for his acts so not to blur the distinct lines which separate murder from manslaughter.

66. Ms. Clarke flagged that the decision in *R v Woods* established that there are two distinct questions to be decided. The first one is whether the case calls for a life sentence. The DPP submitted that consideration of a life sentence is the starting approach to sentencing for a case of manslaughter by diminished responsibility, particularly where the facts show there was an intention to kill. In *R v Woods* the only alternative to a sentence of life imprisonment was imprisonment for public protection under section 225(3) of the CJA 2003. Such an order was an indeterminate sentence. This is why the Court of Appeal determined that under section 225, whether a life sentence is imposed or whether imprisonment for public protection was ordered, the second part of the sentencing approach would necessarily require the assessment of a minimum custodial term to be served before the possibility of release on parole. In *R v Wood* the appellant's Counsel argued that Mr. Woods' mental impairment justified an order for imprisonment for public protection under subsection (3) and invited the Court to assess the gravity of the manslaughter primarily on the appellant's mental culpability rather than the harm because death was an unchanging factor for both murder and manslaughter. The Court of Appeal said this [14]:

"…*whole life, 30 years, and 15 years, with equally specific provisions for offenders under 18 years- demonstrates what every judge knows, that in murder cases although the result- the death of the victim- is identical, the gravity of each individual offence is not. Accordingly we disagree that the assessment of the seriousness of an offence of manslaughter on the grounds of diminished responsibility must be focused exclusively on the defendant's culpability*."

67. Both Counsel pointed to the sentencing remarks of Mr. Justice Males sitting in the Sheffield Crown Court in the case of *R v Peter Redfern* (16 January 2014). In that case Justice Males made the following concluding statements:

"…*Sentences for manslaughter are not fixed by law in the way murder sentences are, and the statutory and aggravating and mitigating factors do not apply quite in the same way. Nevertheless the harm done by manslaughter, namely the loss of a life and the devastating impact which that loss has on friends and family is much the same as in cases of murder. The culpability of an offender is less than in a case of murder, but is by no means extinguished. Although your responsibility was diminished, you did still intend to kill. The sentence for manslaughter must therefore bear some relationship to what the sentence would have been for murder and I must and do have regard to the statutory factors to the extent that they are capable of applying*…"

68. Turning to an example of a fixed term sentence for manslaughter by diminished responsibility, Ms. Clarke pointed to the English Court of Appeal judgment on sentence in *R v Brown* [2012] 2 Cr. App. R (S.) where the Appellant was sentenced to 24 years' imprisonment after having tendered a guilty plea. In that case the appellant killed his wife with whom he had two children. The appellant and the deceased had started divorce proceedings and the appellant felt that his wife was trying to manipulate the legal proceedings. Prior to the killing, the Appellant's children were staying with him during a half-term holiday. The appellant drove the children back to his soon-to-be-ex-wife's residence while armed with a hammer concealed in his daughter's homework. When he arrived, he proceeded to strike her violently with the hammer fourteen times in the hallway of her home. He then placed his wife's body in the back of his car and dropped his children back to his place to the care of his girlfriend. From there he drove his wife's body to a remote place where he then got out of his car and dragged her body some 100 feet to be placed in a box and buried in a hole in the ground which he had previously dug.

69. Amongst the Court's concluding remarks on the facts of the case, Lord C.J. said:

"*The facts of this case are stark. This young woman died as a result of a brutal attack in her own home within moments of greeting her children after weekend contact with their father. The weapon used for the killing was taken into the home by her innocent daughter. The events, if not actually seen by the children, were witnessed by them. The lack of thought for these young children, even if in part explicable through loss of control when the violence was inflicted on their mother, is chilling. It was aggravated when her young daughter saw the appellant put her mother in the boot of the car and her son, asking if they were taking her to the hospital. Not a moment's thought was given to them, or their welfare, or the impact of what he fully appreciated he had done to their mother. She, of course, was the first victim of this*

dreadful crime, but the children too were victims, not merely in the broad distressing sense that they had lost their mother but because they heard and saw this terrible crime unfold. "

70. The medical evidence before the Court was that the appellant had developed an adjustment disorder as a consequence of stressful life events over a period of time. The expert opinion evidence suggested that the appellant's ability to exercise self-control at the time of the killing and disposal of the body was substantially impaired.

71. Before dismissing the appeal against sentence, Lord Judge C.J. said:

"*We must now address the correlation between the normal starting points contained in Schedule 21 of the 2003 Act and sentencing following conviction of manslaughter. In cases of murder, of course, the sentencing judge assesses the minimum term to be served for the purposes of punishment and deterrence, before any question of release can be considered. Unless the judge is considering a minimum term following a discretionary order for life imprisonment, in most cases of manslaughter the term of years ordered by the sentencing judge does not reflect the minimum term to be served, rather it specifies the term, half of which will be served. We do not think it necessary for judges seeking to apply the Wood principle to set out an exact arithmetical computation of the sentence which would have been passed if there had been a conviction for murder. In this court, on an appeal, we focus on the sentence itself. Perceived errors in individual aspects of the sentencing process obviously require us to consider the end result very carefully, but it is the result on which we must concentrate. Whether or not the computation is set out, it provides a helpful method of approach, identifying the necessary features of the case, both the aggravating and mitigating features, and then applying an appropriate discount for the defendant's reduced level of culpability. This is a fact specific decision, to be made by the judge, consistently with the medical evidence and the jury verdict, and then publicly explained, as Cooke J explained his conclusion in the present case*."

72. Ms. Christopher produced the judgment of the English Court of Appeal in *R v Michael Barnard* [2019] EWCA Crim 1896 as an authority for what is meant by an "*abuse of a position of trust*" in cases of attempted murder. The Court held that this kind of aggravating factor more so applies to cases where the offender has a parental or other similar responsibility for the victim and not to cases involving an attack by a spouse. Beyond the issue of positions of trust, this case was of minimal assistance to me as it involved the offence of attempted murder, not manslaughter by diminished responsibility.

73. The case of *R v Anthony Williams* [2021] EWCA Crim 738 involved an elderly couple of 47 years of marriage. The husband, who had no previous criminal convictions at the age of 69 years fatally attacked his wife as she laid in her bed early one morning. As she escaped from the bedroom, he followed her downstairs and strangled her before alerting the neighbours and

asking them to call the police. The husband was acquitted of murder and sentenced for manslaughter. At the sentencing stage, the Crown and the Defence agreed that the husband retained a low level of mental responsibility for his actions, notwithstanding that the Crown earlier rejected the husband plea to manslaughter by reason of diminished responsibility. In the final determination of the appeal proceedings, the Court of Appeal upheld the 5 year sentence passed primarily on the basis that he retained a low level of mental responsibility for the crime, despite the presence of otherwise significant aggravating features relating to how the killing was carried out. When considering whether the sentence in the round was unduly lenient, the Court of Appeal stated:

"*It was an atypical case of homicide. The offender acted utterly out of keeping with how he had conducted himself throughout his life and throughout what had been a long and happy marriage. The only explanation for his conduct, as the jury accepted, was that he was seriously unwell. The illness was undiagnosed and untreated, even though he had sought treatment. He immediately raised the alarm, made immediate admissions and his overwhelming remorse was obvious. The sentence imposed was not duly lenient*."

74. This Court was also directed by Ms. Christopher to the sentencing decision on appeal in *Thomas Westwood v R* [2020] EWCA Crim 598 in which the question on appeal was whether the Court of original jurisdiction had erred in employing the penal element attached to section 45A of the Mental Health Act. In that case the Court of Appeal quashed the original order and found [103]:

"*In view of the low level of the appellant's "retained responsibility", the likelihood that for the rest of his life he will need psychiatric treatment and supervision that can most effectively be provided through orders under sections 37 and 41 of the Mental Health Act, and the likely advantages in this case of the regime for and on his release under such orders when compared to an order under section 45A, we consider that that is the right disposal here*."

75. From this decision Ms. Christopher highlighted the Court of Appeal's endorsement of its earlier statement in *R v Edwards* [34v]: "*a failure to take prescribed medication is "not necessarily a culpable omission", but may be attributable, at least to some degree, to the offender's mental illness. Here, so far as we can see, there was no evidence that, in the circumstances as they were at the time of the offence, it was a "culpable omission"*."

Analysis:

76. In sentencing the Accused, I must have due regard and give proper weight to numerous relevant factors to be balanced together. In this case, the most contentious issue for determination centers on the degree of mental responsibility the Accused retained in carrying out this most gruesome and heinous act of violence.

77. In summary, Dr. Henagulph found that the Accused did not suffer from a severe and enduring mental disorder such as schizophrenia, bipolar disorder or severe depression. He further concluded that his mental health condition is not one which requires hospital treatment under the Mental Health Act 1968. Instead, the Accused's mental condition at the time of the killing was more akin to a mild to moderate degree of Prolonged Grief Disorder (PGD) in combination with a sub-threshold and/or mild degree of Post-Traumatic Stress Disorder (PTSD) which was directly related to the trauma he experienced from witnessing his sister's death as a 10 year old boy and the long-lasting grief which followed.

78. Dr. Henagulph opined that the major factors contributing to the Accused's commission of the offence were these mental disorders. Notably this was exacerbated by the Accused's alcohol abuse. Dr. Henagulph elaborated that the alcohol intoxication served as an enabler of the Accused's emotional state in which the defendant began to experience the emotional pain related to his sister's death. Another trigger which further exacerbated the Accused's explosion of grief was the argument which ensued with his father about the Accused's feelings of abandonment by his father when younger.

79. It falls to this Court to determine the level of mental responsibility the Accused retained in the commission of this offence, notwithstanding his abnormality of mind. In doing so, I must consider whether any of the triggering factors which enabled the Accused to engage his abnormal state of mind were the results of culpable and voluntary acts on his part. The Accused's decision to consume the alcohol which enabled his emotional state was clearly a culpable and voluntary act. This makes his alcohol consumption a real aggravating factor, particularly because of his criminal history and its causal link with alcohol intoxication. This was previously recognized by the Courts of summary jurisdiction in directing the Accused to abstain from alcohol consumption as a condition of his previous conditional discharges pursuant to section 70B of the Criminal Code.

80. Statements made openly to and by the Court at previous sentencing hearings is a matter of Court record, of which I may receive evidence and take judicial notice. Accordingly, I have reviewed the Court Smart Audio Record of the 6 June 2019 sentence hearing before Magistrate Craig Attridge. On that occasion the Accused was convicted on his guilty pleas for violently resisting arrest and assaulting a police officer and a Social Inquiry Report was made available

to the Court. On behalf of the prosecution, Crown Counsel, Mr. Javone Rogers, referred to the "significant trauma" previously experienced by the Accused and accepted that those events would have contributed to the Accused's then offending behavior. Mr. Rogers informed Magistrate Attridge that it was not the Crown's attention to seek a custodial sentence as the Crown was more vested in finding a way to assist Mr. Brown in addressing his trauma which preceded and resulted in his offending behavior. Accordingly, Mr. Rogers invited the magistrate to make an order of probation covering a period of 18 months. He submitted that an 18 month period would allow for sufficient time within which the Accused could complete all of the recommended rehabilitative programs. This was of particular concern because the 12 month term for the 2015 conditional discharge drew to an end before the Accused was able to complete the programs recommended for his mental health treatment and care. It is also evident from those proceedings that the Crown acquiesced to the notion of a conviction-free disposal of proceedings, notwithstanding the Accused's then previous record of similar offences. This lenient approach was clearly offered in recognition of the need to prioritise the Accused's mental health treatment and rehabilitative needs.

81. Mr. Bruce Swan, on behalf of the Accused at the 6 June 2019 sentence hearing, pointed to page 3 of the SIR where the subject of the Accused's mental health was raised. The SIR referred to a previous psychiatric assessment made under the supervision of the 2015 conditional discharge. Reinforcing the position advanced by the Crown, Mr. Swan pleaded for the Court to order a conditional discharge for a term which would enable the Accused to obtain the treatment he needed and at the same time avoid the stain of a conviction on his record in light of his parallel attempts to secure employment at the airport. The risks of foregoing the necessary treatment were equally contemplated in open Court and in the presence of the Accused.

82. Presenting the SIR, Ms. Bean of the Department of Court Services proposed an active care plan to prevent the Accused's violent reoffending. She advised that a minimal period of 24 months would be needed to address the issues raised and warned that a separate psychological report would not be immediately available to the Court given the amount of time needed to obtain such reports. During the open Court exchange between the Court and Ms. Bean, Magistrate Attridge stated; "…*the main thing is really that Mr. Brown get the help he needs*" and then proceeded to sentence the Accused to a 3 year conditional discharge in which he imposed the conditions pursuant to section 70A and 70B of the Criminal Code.

83. Against this background, I am bound to find that the Accused was not only aware of his rehabilitative needs prior to the killing but was also plainly aware of the connection between his untreated mental health and alcohol use on one part and his proneness to violent outbursts on the other part. He was well aware that the combination of his alcohol use and his unresolved issues about his deceased sister had a history of resulting in his violent and uncontrolled

outbursts followed by some form of a black-out or lapse of memory. He not only ought to have known of his propensity for violent conduct under those combined circumstances but did in fact know. After all, he was present when Counsel, Ms. Bean of the Department of Court Services and Magistrate Attridge spoke of these very points at the 2019 sentencing hearing after similar points had been raised at the 2015 Court hearing. Instead of complying with the 3 year treatment program put in place, the Accused voluntarily engaged in alcohol consumption while he was in close company with his father for whom he harboured feelings of resentment. Those feeling of resentment were known to the Accused and evidenced by his admission of previous angry disputes between the two of them.

84. In my judgment, these are all relevant indicators pointing to the degree of the Accused's mental responsibility retained for the offence, which I find to be at a high level. The Accused's pattern of heavy binging on alcohol is not, as I see it, attributable to his mental illness. His willingness to intoxicate himself in such close company with his father was more so his dangerous way of permitting his unrestrained emotional state to be unleashed from an abnormal state of mind. The Accused knew all too well on 8 July 2020 that he was filled with a long-lasting and high dose of anger and hurt inside of him and he knew that his excessive alcohol consumption would inevitably lure him into an uncontrolled and violent disposition. In his defence, I accept that he may not have envisaged the extremities of his violent conduct. However, I find that he did know that his psychosis of emotional violent rages were historically triggered and enabled by alcohol consumption.

85. In blatant disregard of his treatment needs and the dangers of straying from his publicly funded treatment plan, the Accused voluntarily indulged in alcohol consumption, notwithstanding his history of resulting violent outbursts and Court directions to refrain from alcohol use. Otherwise put, the Accused was plainly aware that inside him, lived a sleeping monster which would likely be awakened if he intoxicated himself with alcohol while in company with his father who he held largely responsible for the last 17 years of his unresolved grief.

86. Having regard to all of the facts and circumstances made known to this Court, I find that the Accused poses a significant risk of serious harm to other members of the public, inclusive of his other family members. The lower Courts have applied much effort to assist and encourage the Accused to follow through with in his treatment needs to avoid any further risk of reoffending, particularly at an escalated level. These efforts were not successful.

87. In my judgment there is an obviously high risk that the Accused will continue to commit violently explosive acts, endangering the lives of other innocent people, until he completes his special treatment needs under the supervision and control of a custodial sentence. His treatment care will no doubt have to be adjusted if not increased to accommodate the added stress related to the fact that his family relationships have been severely damaged since he savagely

slaughtered his father in the presence and proximity of some of his closest family members. After all, Dr. Henagulph's opinion was that his mental disorder is one which falls under the general category of '*disorders specifically associated with stress*.'

88. The facts made known to this Court do not tell a tale of an abusive or wicked father who was eventually confronted by the cycle of his own sins. To the contrary, Mr. Amon Brown has been consistently described as a loving and active father, grandfather, son, brother and friend to numerous grieving people. That is the unchallenged account of eight different family members and loved ones who in their Victim Impact Statements ("VIS") unequivocally contended that Mr. Amon Brown was a dependable, loving and supportive family man.

89. A clear message of deterrence must be sent to all potential offenders who might willingly turn a blind eye to their clear needs for mental health treatment. This message is particularly aimed at persons who would flagrantly and recklessly feed on intoxicants, knowing that such behavior serves only to inflame their untreated mental health issues.

90. In this case, the nature of the killing itself is a clear aggravating factor as the circumstances of the killing can only increase the gravity of the offence which I would describe as particularly high. The Deceased, a 52 year old family man, was beaten to the point of being knocked to the ground and then stabbed mercilessly by the Accused who relentlessly pursued his father as he sought to escape, shirtless and desperately knocking on a neighbouring door for rescue. Having already butchered his poor father who held his hand to his stomach wounds while staggering up a hill, the Accused persisted in the attack with the ferocity of an enraged wild dog. Instead of dying as an old man in the loving company and care of his family, Mr. Amon Brown suffered a cruel and prolonged fatal attack, knowing that it was his own son that did this to him. Sadly, the otherwise joyful story of his life on this earth is now, no doubt, marred with the ugly details of his death. It is a cruel irony that a single wound penetrated the Deceased's heart and that a listed cause of his death was a form of shock.

91. Another aggravating factor is the fact that the Accused committed this offence while under the conditional terms of a conditional discharge. I have addressed this point extensively in the context of the Accused's retained mental responsibility. I must also keep in mind that the Accused also faces the statutory aggravating factor listed under section 55(2)(fa)(iv) (as the offence committed qualifies under section 329D) which applies where an offender has committed a serious personal injury offence against a member of his family.

92. In the circumstances of this case, I have had careful regard to Part IV of the Criminal Code as it relates to the purpose and principles of sentencing. I have considered the objectives of sentencing under section 53 and the fundamental principle that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

93. In respect of mitigation, I will give the Accused the full benefit of a guilty plea and his expressions of remorse. I am also mindful of the Accused's relatively youthful age and the fact that he is the father of a 3 year old girl who will be deprived of the regular presence and security of an active and loving father for so many of her formative years to come. I have also considered the unconditionally supportive words Ms. Vivian Esme Williams and the Accused's mother, Ms. Margaret Moore.

94. I have considered all lawful sanctions other than imprisonment as the Court is required to do under section 55 of the Criminal Code. However, only an immediate custodial sentence in the form of a life sentence is appropriate in this case. The DPP did not ask for this Court to impose a life sentence. Instead she advocated for a fixed term sentence ranging between 25 and 35 years. If a fixed sentence of 25 years was to be ordered by this Court, the Accused would be eligible for release on parole after serving one third of that period; i.e. 8 years imprisonment. Adopting the words of the Court of Appeal's remark in *Kethyio Whitehurst v R* [2018] Bda LR 30 [46] in relation to a third portion of a 10 year sentence, "*most members of the public would find that surprising*."

95. That being said, no fair criticism can be made against the Crown for seeking a fixed term sentence as the DPP expressly and correctly submitted that the Court's starting point to sentencing an offender for manslaughter by diminished responsibility is to approach the sentence as if it were a murder conviction. Once the correct sentence is assessed, the Court may then reduce the sentence to reflect the degree of the Accused's mental responsibility retained for the offence. I agree with Ms. Clarke's submission in this respect.

96. Applying that approach, I find that the Accused's reduced level of mental responsibility arising out of his abnormality of mind (noting that the reduction is on the lower end given the high level of mental responsibility retained) in addition to his guilty plea and expression of remorse are factors which are relevant to my determination of the portion of the sentence he must serve before he is entitled to apply to the Parole Board for release on licence under the Parole Board Act 2001.

97. Having had regard to all of the circumstances of the commission of the offence and the character and circumstances of the Accused, I direct that he serve no less than 12 years imprisonment before he may be considered for release on parole. (This portion of the sentence to be served is more comparable to the term of imprisonment that the Accused would have served had I imposed a sentence on the upper end of the sentence range proposed by the Crown.)

Conclusion

98. For the reasons outlined herein, I impose a life sentence and direct that the Accused must serve no less than 12 years before he may be deemed eligible for release on parole.

Dated this 6th day of April 2022

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THE HON. MRS JUSTICE SHADE SUBAIR WILLIAMS
PUISNE JUDGE