[2013] JMCA Crim 50

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 52/2010

BEFORE: THE HON MR JUSTICE MORRISON JA
THE HON MR JUSTICE DUKHARAN JA
THE HON MR JUSTICE BROOKS JA

DENNIS BEAGLE v R

Robert Fletcher for the appellant

Mrs Karen Seymour-Johnson for the Crown

23 and 25 September 2013

ORAL JUDGMENT

BROOKS JA

[1] On 25 February 2005, the appellant, Mr Dennis Beagle, went to the home of his stepfather, Mr Valentine Taylor. There, according to Mr Beagle, the two had a dispute during which a barrel was overturned on the elderly Mr Taylor. Mr Beagle said that he also used a bottle to hit Mr Taylor on the head. These events resulted in the latter receiving multiple injuries to the head. He succumbed to those injuries. On the following day, Mr Beagle was arrested for the killing, and he was eventually charged for murder, in relation to Mr Taylor's death.

[2] The indictment charging him with murder came on for trial on 15 March 2010, at which time Mr Beagle pleaded not guilty to murder but guilty to manslaughter. The prosecution accepted the plea on the basis that it had no evidence which conflicted with Mr Beagle's account of the events. That is the account that has been set out above.

[3] After a plea in mitigation, the learned presiding judge, on 26 March 2010, sentenced Mr Beagle to serve 18 years imprisonment at hard labour. A single judge of this court granted Mr Beagle permission to appeal against this sentence and Mr Fletcher, on his behalf has argued that the sentence is manifestly excessive.

[4] Learned counsel submitted that the learned sentencing judge erred in two distinct ways in her approach to sentence. Firstly, he submitted, she used the wrong starting point, in that she indicated that the appropriate starting point for considering sentence when a life has been taken, should be 30 years. Secondly, Mr Fletcher argued, the learned sentencing judge did not appear to have taken into account the positive features set out in the social enquiry report that had been presented to the court in respect of Mr Beagle. In particular, Mr Fletcher submitted, the learned sentencing judge did not appear to have considered the fact that Mr Beagle had three children who are dependent upon him and the fact that he was gainfully employed at the time of his incarceration.

[5] He further submitted that the learned sentencing judge seemed to have placed more emphasis on the deterrence aspect of sentencing in preference to its rehabilitative aspect. Learned counsel cited the cases of **Emilio Beckford and Kadett Brown v R**

[2010] JMCA Crim 26, **Daniel Robinson v R** [2010] JMCA Crim 75 and **Durrant Morris v R** [2012] JMCA Crim 42, in support of his submissions.

[6] In the excerpt of the transcript, which Mr Fletcher found to have indicated an incorrect starting point, the learned sentencing judge is reported as having said:

> "I was thinking of Thirty [years], I take off Five, and then I take off an extra Two. The Court of Appeal ought to be thinking that in this day and age of crime and violence and murders that anybody who commits murder should be doing life, and life should mean life and therefore if you pleaded guilty to manslaugter, you [sic] talking about Thirty and Forty. That is my view. But then I am only an acting High Court Judge, right?"

[7] It is reasonably clear that, despite the view that she had expressed, the sentence imposed by the learned sentencing judge did not follow the mathematical formula that she had opined as being appropriate. In fact, the words quoted above were used after the sentence had already been imposed. It would perhaps be unfair to the learned sentencing judge, based on those words, to state that she had used an incorrect starting point.

[8] It would be more accurate to state that the learned sentencing judge did not demonstrate that she had considered the positive aspects of Mr Beagle's antecedents, to which Mr Fletcher alluded. In passing sentence, the learned sentencing judge stated:

> "Stand up please, Mr Beadle [sic]. I have taken into consideration that you have pleaded guilty. I consider it to have been a very strategic plea. Nevertheless, you did in fact plead guilty. I have also taken into consideration that

> your lawyer has indicated that you have already served five years. And I have therefore discounted not only for the plea of guilt but also for the five years which you have been in custody. But I have also considered that someone has lost his life, and he is an elderly man, some may very well consider to be helpless at the time when you took it. And therefore the punishment must fit the crime. The sentence of the court is that you do eighteen years imprisonment at hard labour."

[9] It is true that the learned sentencing judge did not mention the fact that Mr Beagle had three dependent children and that he was employed (as a labourer) at the time of his arrest. Those matters, should have been mentioned to demonstrate that the sentencer had considered the matter in the round. In light of the omission, the task of this court is to determine whether the sentence is manifestly excessive.

[10] The cases cited by Mr Fletcher support a reduction of the sentence in the instant case. In **Emilio Beckford and Kadett Brown v R**, a sentence of 23 years imposed for the offence of murder was reduced to 18 years when this court substituted a conviction for manslaughter. That killing involved the use of a firearm and occurred during a robbery.

[11] In **Durrant Morris**, a plea of guilty to manslaughter was accepted in similar circumstances to the instant case, that is, the deceased was found dead, after having last been seen in the company of the convicted man. She had been strangled to death. The convicted man was a married man, 41 years old and the father of three children, with no previous convictions. He pleaded guilty at a very early stage of the proceedings. His application to have a sentence of 15 years imprisonment overturned

was refused. This court found that it could not be said that the sentence was manifestly excessive.

[12] **Daniel Robinson v R** also involved a plea of guilty to manslaughter. That offender had strangled to death, a woman with whom he was intimately involved. He too made an early confession of guilt and this court reduced a sentence of 20 years for manslaughter to 15 years.

[13] The case of **Raphael Russel v R** [2010] JMCA Crim 85 also involved a guilty plea for the offence of manslaughter. That plea was, however, profferred during the course of the trial and after four witnesses for the prosecution had testified. The offender in that case had used a piece of lumber to strike his victim once on the head. The victim died from of the resulting injury. On appeal, this court found that it could not "be said that a sentence of 21 years imprisonment [that was imposed on the offender] in these circumstances is manifestly excessive". A distinction, albeit a small one, may be drawn between the circumstances in **Russell** and those in the instant case, as a result of the timing of the guilty plea.

[14] Based on those authorities, and the fact that the learned sentencing judge did not mention certain mitigating aspects of the social enquiry report, this court is prepared to state that the sentence of 18 years is manifestly excessive and is prepared to reduce the sentence to 15 years.

[15] Accordingly, the appeal is allowed, the sentence imposed by the learned sentencing judge is set aside and a sentence of 15 years is substituted therefor. The sentence is to be reckoned as having commenced on 26 March 2010.