

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 36/08

**BEFORE: THE HON. MR. JUSTICE PANTON, P.
THE HON. MR. JUSTICE COOKE, J.A.
THE HON. MR. JUSTICE DUKHARAN, J.A.**

CEBERT FALCONER v R

**Ms. Jacqueline Cummings instructed by Archer Cummings & Co
for the appellant**

Ms. Kamar Henry for the Crown

11th May 2009

ORAL JUDGMENT

PANTON, P.

1. The appellant Mr. Cebert Falconer was granted leave to appeal against sentence by a single judge of this court, he having pleaded guilty to manslaughter on the 6th of March 2008 and having been sentenced on that plea to twenty years imprisonment at hard labour.

2. The particulars before the learned judge, Mrs. Justice Sinclair-Haynes sitting in the Clarendon Circuit Court holden at May Pen on the 6th of March 2008, were that Mr. Falconer murdered Melbourne Elliot on the 10th of April

2007. When he was pleaded he announced that he was not guilty of murder but guilty of manslaughter.

3. The facts, as narrated by counsel for the Crown at the time, were that on Tuesday the 10th April 2007 at about 10:30 in the morning the deceased was sitting at a shop piazza in Rock District in Clarendon talking to two persons. The appellant walked up towards them and began thumping the deceased. While this was happening, the deceased fell and it was then noticed that he had blood all over him. The deceased indicated that he was stabbed by the appellant who then walked away from the scene. Clearly, the thumping was stabbing. He was taken to the May Pen Hospital where emergency surgical procedures failed to help him survive. The appellant, when he was arrested and cautioned, said "Officer, a him spit pan me and mi did vex, so mi tek out mi knife and jook him."

4. The learned judge in delivering her judgment so far as the sentence was concerned bemoaned the fact that the society was in a terrible state with the frequency of occurrences such as this, the clear lack of regard for the sanctity of life and the ease with which human beings, particularly the male kind in Jamaica, regard themselves as having been provoked. She also bemoaned the ease with which weapons are produced and used to settle scores some of which, in our view appear to be non-existent.

5. Learned counsel Ms. Jacqueline Cummings has submitted that sufficient consideration had not been given to the fact that the appellant pleaded guilty

and that this was a sort of killing that was to be described as domestic, it being the tag placed on it by the Peace Officers. She referred to the case of ***R v Icilda Brown*** [1990] 27 JLR 321 determined in this court by a majority nearly twenty years ago wherein a sentence of ten years was reduced to one of seven. That was an incident involving a fight between the appellant ***Icilda Brown*** and her common law gentleman, whom she killed.

6. We are of the view that ***R v Icilda Brown*** (supra) is most unhelpful in the circumstances that are involved here. However, we are of the view that given the circumstances, in this case and the plea of guilty, the sentence of twenty years may well be regarded as manifestly excessive. Each case has to be determined on its own facts and quite often in matters of this nature, hardly any useful purpose is served in referring to other cases, because they are different. The situation here is one where we do think that twenty years is manifestly excessive and we accordingly allow the appeal and reduce the sentence to one of fifteen years imprisonment commencing on the date of sentence, the 13th March 2008.