

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CRIMINAL APPEAL NO 95/2017**

**BEFORE: THE HON MR JUSTICE BROOKS JA  
THE HON MR JUSTICE F WILLIAMS JA  
THE HON MISS JUSTICE STRAW JA**

**RYAN EDWARDS v R**

**Mrs Ann-Marie Feurtado-Richards for the applicant**

**Mrs Maxine Dennis-McPherson for the Crown**

**13 and 14 January 2020**

**F WILLIAMS JA**

**Background**

[1] This matter comes before us as a renewal of an application for leave to appeal against sentence, the application before the single judge having been refused on 22 October 2018.

[2] The applicant had pleaded guilty to the offence of murder on 20 October 2017 in the Circuit Court for the parish of Saint Ann; and, on 3 November 2017 was sentenced by D Palmer J (“the learned judge”) to life imprisonment, with the stipulation that he serve 15 years’ imprisonment before he would have become eligible for parole.

[3] The allegations to which he pleaded guilty were that he had stabbed to death Miss Alicia Garvey with whom he had had an intimate relationship some time before. The stabbing came after Miss Garvey had made a report against him, at the Ocho Rios Police Station, in the parish of Saint Ann, that he had threatened her. The applicant had also attended the police station in Ocho Rios to be spoken to by the police about that report. Miss Garvey was stabbed at a supermarket to which she and her mother had gone, after leaving the police station.

### **The sentence**

[4] In his sentencing remarks, the learned judge observed that, in stipulating the period of 15 years to be served before the applicant became eligible for parole, he was imposing the statutory minimum. He also made several references to the applicant's age: the applicant, having been born on 29 January 1996, would have been 21 years of age at the time the offence was committed and 22 years of age at the time of sentencing.

### **The application**

[5] When the matter came on before us for hearing, Mrs Feurtado-Richards of counsel, on behalf of the applicant, frankly conceded that, having perused the transcript, there was nothing that she could usefully urge on the court on her client's behalf. She stated that she had informed him of this conclusion and had taken his instructions in writing to proceed as she had indicated. Mrs Feurtado-Richards further informed us that her main basis for coming to this position was an acknowledgement that it was the statutory minimum sentence that had been imposed.

[6] For her part, Mrs Dennis-McPherson, on behalf of the Crown, indicated that, having perused the transcript herself; and, recognizing that it was the statutory minimum sentence that had been imposed, she was of the view that the sentence imposed could not be regarded as being manifestly excessive.

### **Discussion**

[7] The particular piece of legislation pursuant to which offenders are sentenced for the offence of murder is the Offences against the Person Act ("the Act"). Section 3(1)(b) of that Act provides as follows:

"3.-(1) Every person who is convicted of murder falling within-

(a) section 2(1) (a) to (f) or to whom subsection (1A) applies, shall be sentenced to death or to imprisonment for life;

(b) section 2(2), shall be sentenced to imprisonment for life or such other term as the court considers appropriate, not being less than fifteen years."

[8] Section 2(2) of the Act reads as follows:

"(2) Subject to subsection (3), every person convicted of murder other than a person-

(a) convicted of murder in the circumstances specified in subsection (1)(a) to (f); or

(b) to whom section 3(1A) applies,

shall be sentenced in accordance with section 3(1)(b)."

[9] We must therefore give brief consideration to subsection (1)(a) to (f) and to section 3(1A).

[10] In summary, the type of murders referred to in subsection (1)(a) to (f) relate to the killing of persons such as members of the security forces; judicial officers; justices of the peace and others, acting in the course of their duties; witnesses and jurors; contract-type killings and killings calculated to create a state of fear in the public or any section of it. This murder does not fall within any of those categories.

[11] The murders covered by section 3(1A) include those that are committed by a person "in the course or furtherance of, arising out of, or ancillary to" any of the following offences:

- "(a) burglary or housebreaking;
- (b) arson in relation to a dwelling house;
- (c) robbery; or
- (d) any sexual offence."

[12] This murder also does not fall within any of those categories. It therefore fell to be dealt with pursuant to section 3(1)(b). That section gives a judge (such as the learned judge in this case), the discretion of imposing a sentence of life imprisonment, with a stipulation of a period to be served before becoming eligible for parole; or a determinate sentence which should not be less than 15 years.

[13] It is also necessary to read section 3(1)(b) in the light of section 3(1C). (The marginal note to section 3 reads: "Sentence for murder"). That subsection reads as follows:

- "(1C) In the case of a person convicted of murder, the following provisions shall have effect with regard to that

person's eligibility for parole, as if those provisions had been substituted for section 6(1) to (4) of the Parole Act-

- (a) where a court imposes a sentence of imprisonment for life pursuant to subsection (1)(a), the court shall specify a period, being not less than twenty years, which that person should serve before becoming eligible for parole; or
- (b) where, pursuant to subsection (1)(b), a court imposes-
  - (i) a sentence of imprisonment for life, the court shall specify a period, being not less than fifteen years;  
or
  - (ii) any other sentence of imprisonment, the court shall specify a period, being not less than ten years, which that person should serve before becoming eligible for parole." (Emphasis added)

[14] The foregoing examination of these provisions should make it evident that the concession made by Mrs Feurtado-Richards (and supported by Mrs Dennis-McPherson) was quite correctly made. The learned judge, having been bound by the requirements of the relevant statute, imposed the minimum period to be stipulated on the passing of a sentence of life imprisonment – that is, 15 years. He had a discretion whether to impose a sentence of life imprisonment or a determinate sentence; but we can discern no error of principle that would lead us to conclude that he erred in imposing the former, rather than the latter. In the result, the application for leave to appeal against sentence is refused and the sentence is to be reckoned as having commenced on the date on which it was imposed - that is, 3 November 2017.