

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO 84/2011

**BEFORE: THE HON MR JUSTICE MORRISON JA
THE HON MISS JUSTICE PHILLIPS JA
THE HON MS JUSTICE LAWRENCE-BESWICK JA (AG)**

IAN JOHNSON v R

Robert Fletcher for the applicant

Mrs Tracy-Ann Johnson for the Crown

10 and 11 July 2014 and 9 October 2015

MORRISON JA

[1] At the conclusion of the hearing of the application for leave to appeal in this matter on 11 July 2014, the court made the following order:

1. The application for leave to appeal is granted.
2. The hearing of the application is treated as the hearing of the appeal, which is allowed.
3. The sentence of 20 years' imprisonment imposed by Morrison J is set aside and the matter is remitted to the Supreme Court for re-sentencing.

4. The re-sentencing exercise is to be informed by evidence of a comprehensive psychiatric evaluation of the applicant.

[2] With apologies for the delay, these are the court's reasons for this decision. But it is first necessary to state something of the background to the matter. On 12 October 2011, the applicant appeared before Morrison J in the Clarendon Circuit Court on a charge of murder. He pleaded not guilty to murder, but guilty to manslaughter. The brief facts outlined to the court by counsel for the prosecution were as follows. On 20 May 2008, the deceased, who was the applicant's sister, was at home. After the deceased was heard crying out, the applicant was seen running away with a knife in his hand. The deceased was seen on the ground bleeding from different parts of her body. A post mortem examination revealed a number of lacerations and other wounds to the deceased's body, including to her chest and abdomen.

[3] The following information as to the applicant's mental state was then conveyed to the court by counsel for the prosecution:

"M'Lord, I will indicate for completeness, that the basis on which the prosecution has agreed to accept the plea to the lesser offence, which rests in a psychiatric report down [sic] on the [applicant], by Dr. Charmaine Singh, which reveals that the [applicant], in her words, suffers from schizophrenia and that at present, that it [sic] is at sometime [sic] of examination was not found to have evidence of psychosis and of such, he was deemed fit to plead today, and is to continue a course of treatment outlined in this assessment."

[4] The learned judge's immediate comment was that he was "not persuaded he [the applicant] is schizophrenic". However, at the request of counsel for the applicant, a social enquiry report was ordered and the matter was adjourned to 27 October 2011 for sentencing. On that date, the report presented to court revealed that the applicant had a number of previous convictions and that he had exhibited a pattern of persistent antisocial behaviour in the past. The probation officer who prepared the report observed that, despite the fact that, when interviewed, the applicant maintained that he was mentally and physically well, "[h]is disposition and interactions however caused question as to the stability of his mental health". The probation officer further opined that, in the circumstances, "confinement seems necessary to provide the [applicant] with appropriate mental health supervision if required and to protect the family as well as society from his consistently unacceptable tendencies".

[5] After a plea in mitigation made by the applicant's counsel on his behalf, the learned judge then sentenced him to 20 years' imprisonment. The learned judge made a recommendation that, while in prison, the applicant should be given a "schizophrenic evaluation and possibly psychiatric evaluation".

[6] The applicant's single ground of appeal was that the sentence of the court was manifestly excessive. Mr Fletcher (who did not appear in the court below) submitted that, in order to determine the appropriate sentence for the applicant, more information of a medical nature ought to have been obtained by the court. This was particularly so, Mr Fletcher submitted, in the light of the questions raised by both counsel for the prosecution, when outlining the facts, and by the probation officer, in the social enquiry

report, as to the applicant's mental state. In support of this submission, Mr Fletcher referred us to the decision of this court in **Andrae Bradford v R**¹, in which the court applied its own previous decisions in **R v Valerie Witter**² and **R v Denzil Crooks**³.

[7] In **Valerie Witter**, on a plea of guilty to manslaughter, the applicant was sentenced to imprisonment for life with a recommendation for psychiatric treatment. On appeal, the court considered it necessary to ask the doctor who had prepared a report on the applicant's psychiatric condition to attend before it and to give evidence as to the applicant's mental condition. Having satisfied itself by that means that the sentence passed by the judge was appropriate, the court dismissed the application for leave to appeal against sentence. However, the court observed⁴ that "it is of vital importance that medical evidence should be taken so that the trial court can be in a position to ascertain what sentence it should impose".

[8] The facts of **Andrae Bradford** bear some resemblance to the facts of this case, in that, in that case the learned trial judge, having sentenced him to life imprisonment, with a stipulation that he should serve at least 25 years in prison before becoming eligible for parole, ordered a psychiatric evaluation of the applicant. This court considered⁵ that, in so doing, the learned trial judge fell into error:

"...it was plainly necessary in the instant case, in our view, to take the applicant's psychiatric status into account as a potentially mitigating factor. The learned trial judge ordered

¹ [2013] JMCA Crim 17

² (1973) 12 JLR 1261

³ SCCA No 153/1973, judgment delivered 1 May 1974

⁴ At page 1263, per Henriques P

⁵ At para. [12]

a psychiatric evaluation of the applicant after he had already passed sentence on [him], and not before, as he was required to do in order for him to be able to determine the sentence that was appropriate to the applicant's particular circumstances...."

[9] These observations were, in our view, equally applicable to this case. For, notwithstanding the learned judge's own apparent skepticism as regards the applicant's mental condition, he nevertheless thought it prudent, on the basis of the material before him, to make a recommendation that the applicant be given a psychiatric evaluation while serving his sentence. In this case, the situation was compounded by the material very properly provided to us by counsel for the prosecution during the hearing of the application. Addressing the issue of applicant's fitness to plead before the matter came on for trial, that material clearly demonstrated that, up to a week before the trial date, the applicant had been diagnosed with schizophrenia.

[10] In all of these circumstances, we accordingly concluded that, by not ordering a psychiatric evaluation of the applicant before passing sentence on him, the learned judge had deprived himself of critical information relevant to the sentencing process.