

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO: 77/91

COR: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MR. JUSTICE GORDON, J.A.

R. V. DONALD COUSLEY

Howard Hamilton, Q.C., for Applicant

Hugh Wildman for Crown

February 22 & March 15, 1993

GORDON, J.A.

The applicant was convicted in the Circuit Court for the parish of Portland before Ellis J, and a jury on 17th June 1991, for the murder of Martin Luther Phillips committed on 6th April 1991. On 22nd February 1993, we refused his application for leave to appeal and applying the provisions of the Offences against the Person (Amendment) Act 1992, we classified the offence non-capital murder and substituted the prescribed sentence of imprisonment for life. We then considered the submissions of counsel and directed that the applicant be not considered eligible for parole until he had served a period of twelve years in prison. We indicated then that we would in due course deliver a written judgment and this we now present.

The facts may be briefly stated. The applicant, a former member of the Jamaica Constabulary Force, the prosecution chief witness David Hanslip and the deceased, on the 6th April, 1991 spent an evening in a bar at Snow Hill in the parish of Portland enjoying the dubious pleasure of imbibing strong drinks. They left the bar for the deceased's home. The deceased entered his bedroom and the witness heard the applicant threaten to kill the

deceased. Hanslip saw the applicant arm himself with a "Rambo" knife and enter the deceased's bedroom. He heard the deceased say "Danny! Danny wey you a kill me fah man?" and the applicant's reply "Wey you kill me mother fah ...". The witness hearing a strange gulping sound in the bedroom, ran from the house. The applicant later caught up with him and threatened him enjoining him to keep quiet about the events of the night.

On 8th April 1991, the partly decomposed body of the deceased was discovered in his bed, lying in blood. There was a stab wound to his neck. The blood-stained "Rambo" knife was on the floor of the bedroom.

The applicant was taken into custody and in his presence Hanslip made a full report of what transpired in the deceased's home. To the accusation the applicant made no response. At the trial the applicant offered no defence to the charge. Hanslip had been cross-examined to show that he had equal opportunity with the applicant to commit the crime.

Mr. Hamilton, Q.C., with utmost candour conceded that he could not challenge the correctness of the conviction which he said there was ample evidence to support. The learned trial judge he submitted, had been fair in his assessment of the issues and his charge to the jury was adequate and correct. We entirely agree with Mr. Hamilton's posture. The evidence of Hanslip, once it was accepted by the jury, was insurmountable.

Mr. Hamilton, Q.C., acknowledged that under the provisions of the Offences against the Person (Amendment) Act the offence the applicant committed, fell to be classified as non-capital murder attracting the sentence of life imprisonment. He urged that the Court take account of the medical evidence, including a report from Dr. Ottey which the Court itself had ordered, to reduce the period of imprisonment prior to eligibility for parole.

We had two reports from psychiatrists as to the mental state of the applicant. Dr. Charles Thesiger found no evidence of any organic impairment but expressed the opinion that he was suffering from a schizophrenic disorder. In his report of the applicant, he said:

"That he gave the impression that the act of killing his friend was justified because he believed that his friend played a part in the death of his mother."

Dr. Franklyn Ottey examined the applicant at the request of this Court on 18th January 1993 some seven months after Dr. Thesiger and he reported (inter alia)

"In my opinion he may have had a psychotic episode but this could have occurred since incarceration. The features of this have since resolved and he is presently displaying no overt psychotic features."

The effect of the reports is that the applicant now displays no overt psychotic features, does not and never did require clinical treatment for any mental disorder.

In enacting section 3A of the Offences against the Person (Amendment) Act, Parliament removed from the influence of the Parole Act sentences of life imprisonment imposed on persons convicted of non-capital murder. The Court is given a discretion to "specify a period being longer than seven years, which that person should serve before becoming eligible for parole"-- Section 3A (2). Parliament has thus emphasized that a distinction ought to be maintained between life imprisonment imposed for non-capital murder and life imprisonment imposed for any other crime.

In this case, the applicant carefully removed all traces of finger-prints on objects in the house that he or the crown witness had touched and wrapped the handle of the knife with a piece of cloth. He then proceeded to stab his victim. He obviously used the knowledge gained from his employment in committing the crime. The act of the applicant was a calculated one and we desire to make it abundantly clear that murder remains an abhorrent crime

and anyone convicted of non-capital murder must expect to serve a period of retribution and deterrence which must necessarily be long. In the circumstances of this case, we fixed twelve years as that period. We add that we took into consideration the fact that the applicant has been in custody since April 1991.