JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CRIMINAL APPEAL NO. 128/91

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

REGINA VS. WHITLEY MYRIE

Mr. Howard Hamilton Q.C. for the appellant

Miss Carol Reid for the Crown

11th January, 1993

CAREY J.A.

In the St. James Circuit Court held on the 2nd October 1991, before Patterson J., sitting with a jury, the applicant was convicted of the murder of one Dennis Grubb. The allegations by the Crown were that the victim was chopped some 10 times with a machete, some of the injuries being inflicted to the victim's back.

The short facts in the case are that, on the 11th August 1990 there was a party held somewhere in the district of Cottage in the parish of St. James, which was attended by the victim and also the applicant and other persons. It would appear that there was some quarrel between the victim and the applicant and others. The victim, Mr. Grubb, had had a deal to drink and returned home much the worse for that drink, and having returned home, sat on his verandah. While there, a number of men including this applicant came to his gate and offered threats, this applicant being the chief spokesman declaring that he intended to kill Grubb. There was stone-throwing at one time, and Mrs. Grubb sent to call her brother who was a district constable. When he arrived, he spoke to some of these men, but was threatened and prudence dictated that he depart that scene. It appears that a noise was heard in the bush which caused a great many of these men

including the applicant, to rush into the bush. Indeed, at that time, the applicant again uttered another threat. The applicant was also seen with a machete. When the wife went into the bush subsequently, she saw her husband lying on his back and he had been severely chopped, his left hand being amputated.

There was evidence from the police of a cautioned statement given by the applicant in which he said in effect that, he had been attacked by Mr. Grubb and he defended himself.

In the course of his summing up, the learned judge referred to this cautioned statement. The material facts emerge from what the applicant is alleged to have said:

> "... When him come before me, me see him pull a machete from the back of his waist and said, 'who you a laugh after, bwoy, you want me kill yuh blood clawt; respect me', and then he used the machete and slapped me in a mi forehead. When him hit me I stagger backways and almost reach down on the ground. Him come down on me, me turn around and run, him slash the machete at me, a don't know if is the point or what catch me at my side. I run go back to where the party was. Me talk to Widcliffe Williams and ask for the District Constable. The people say he was not there. I told them what happen to me and I then leave and went back up the road. When me stand up me hear two stones drop behind me; as I look round ne see Dennis behind me with a machete in his hand. Dennis chop at me and me back away. Him slide and me grab him up and take away the machete from him and give him couple chops. When me chop him him run and go down on the roadside. After me chop him me carry the machete go home and put it in a mi room. Me did go whey. When I come back me hear say the police come and take the machete. Mi girl-friend tell me that the police take it."

When the applicant came to make his defence, he did not resile from that position. Even on the applicant's own statement, it was plain that there was no defence to the charge.

Mr. Hamilton this morning, has candidly conceded that having carefully perused the summation of the learned trial judge, he found it both careful and all embracing. With that view, we entirely agree. The learned trial judge, in our judgment, left

the issues to the jury fairly, adequately and correctly, and there could be no basis whatever for our interference in the verdict at which the jury so properly arrived.

Having regard to the provisions of the Amendment to the Offences against the Person Act, we are now obliged to classify this murder. The facts and circumstances do not bring it within any of the categorizations of capital murder. Accordingly, we hold that this amounts to non capital murder. The sentence therefore is, imprisonment for life which, we now substitute.

We are required by section 4 of the Amendment to the Act to state the period which the applicant should serve before becoming eligible for parole. We heard an interesting argument by counsel for the applicant that we should enquire into the antecedents of the applicant as if we were considering a matter of sentence. We cannot agree with the approach of counsel. In our view, we are not considering the matter of sentence. Sentence is fixed by law; it is imprisonment for life. When the court is called upon to say what period the person should serve before becoming eligible for parole, what in our judgment, the court is required to do is, to consider the facts and cricumstances of the case. It considers the nature of the evidence, the nature of the circumstances of the case - how brutal, how violent, how premeditated, and factors of that kind. Nothing we are saying here is intended to be exhaustive of the factors to be considered but merely to give an indication for what it is, the court ought to look at. So even on the facts which the applicant would have admitted, having removed the weapon with which he was menaced namely, the cutlass, he then proceeded to deal his victim some 10 blows - some in the back. That was a violent, unnecessary and brutal act: indeed an act of cowardice.

One other factor we should mention, we are not considering a sentence as if for manslaughter, we are considering what is the period that he should serve before the Parole Board is entitled

to consider his case. In our view, that period is 15 years. Insofar as the application for leave to appeal is concerned, that is refused.