COMMONWEALTH OF THE BAHAMAS
IN THE COURT OFAPPEAL
SCCrApp. No. 115 of 2018

B E T W E E N

THE ATTTORNEY GENERAL

Appellant

AND

CLAUDE LAWSON GRAY

Respondent

BEFORE: **The Honourable Sir Michael Barnett, P**
The Honourable Sir Brian Moree, CJ
The Honourable Madam Justice Crane-Scott, JA

APPEARANCES: **Mr. Rodger Thompson, Counsel for the Appellant**

Mr. Dorsey McPhee, Counsel for the Respondent

DATES: **26 September 2019; 17 October 2019; 28 January 2020; 19 March 2020; 10 September 2020**

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Criminal appeal – Manslaughter – Sentencing guidelines - Whether sentence unduly lenient

On 6 November 2007 the respondent visited the home of his friend TM. While there a verbal dispute arose and then escalated, resulting in the respondent stabbing TM with a screwdriver. TM died as a result of his injuries and the respondent was charged with his murder in November 2007. He was released on bail in December 2008. Ten years following the incident, in 2017, the respondent was tried for TM's murder; he was found not guilty of murder but guilty of manslaughter and sentenced to 7 years imprisonment. The appellant now appeals that sentence as being unduly lenient and further that there were no strong mitigating factors deserving of such degree of leniency.

Held: appeal dismissed. Sentence affirmed.

per Barnett, P: Undoubtedly the 7-year sentence may be considered lenient. The issue to be determined, however, is whether the sentence is so lenient that no reasonable judge, applying the principles of sentencing could impose such a sentence in the circumstances. Having regard to the sentencing ruling, there was no error of principle disclosed, nor could it be said that the judge exercised her sentencing discretion unreasonably.

The only basis for the Crown's appeal is that the sentence falls outside the range of sentences set out in The Attorney General v Larry Raymond Jones et. al. and there was no reason to go below that range. However, the Court in Larry Raymond Jones had to determine the appropriate range of sentences for murder and in doing so indicated that that range must be proportionate with sentences imposed for manslaughter. The decision in Larry Raymond Jones does not, in fact, have authoritative effect as regards sentences for manslaughter.

Even if Larry Raymond Jones was to be regarded as an authoritative "guideline" for manslaughter sentences, generally speaking it is settled law that a sentencing judge has the power to impose a sentence that is outside the range set out in the guidelines. When departing from the guidelines a sentencing judge should explain why a sentence outside the range is being departed from. The failure to so explain, however, does not automatically make the sentence unduly lenient. The appellate court must still determine whether the actual sentence passed is unduly lenient such that no reasonable judge could have imposed it.

Having regard to sentences imposed by this Court and other courts in similar situations, it cannot be said that the 7 year sentence is unduly lenient.

Andrew Knowles v Regina SCCrApp. No. 73 of 2015 considered
Attorney General Reference No. 20 Stephen Ronald Roast (1992) 13 Cr. App. R (S) 377 considered
Attorney General's Reference (No. 4 of 1989) 90 Cr. App. R 366 considered
Aubrey Darling v R SCCrApp. No. 155 of 2017 considered
Burton v R, Nurse v R (2014) 84 WIR 84 applied
Christine Johnson Alcock v R Criminal Appeal No. 30 of 2001 considered
Dominique Moss and Keith Lotmore v R SCCrApp. Nos. 11 & 14 of 2004 considered
Donnell Rolle v R [2011] 3 BHS J No 25 considered
DPP v McGrath [2020] IECA 41 considered
Forrester Bowe and Trono Davis v The Queen [2006] UKPC 10 mentioned
Kenneth Samuel v The Queen Criminal Appeal No. 7 of 2005 considered
Leroy Rolle v The Attorney General SCCrApp. No. 182 of 2010 considered
Mikko Black v R SCCrApp. No. 40 of 2014 considered
Millberry v R; R v Morgan; R v Lackenby [2002] EWCA Crim 2891 considered
Murdock v R [2003] NICA 21 considered
Prince Hepburn v Regina SCCrApp. No. 79 of 2013 applied
R v Crisnell Desir Criminal No. 688 of 2009 considered
R v Rick Dickson 2019 unreported considered
R v Fanel Joseph Criminal No. 43/2/2012 considered
R v Fitzroy Manderson 2019 unreported considered
R v Garfield Haughton 2019 unreported considered
R v Ingraham [2004] BHS J No. 385 considered
R v Jeffery Campbell 2019 unreported considered
R v Joylyn James GDAHCR2017/0018 considered
R v Martie Hight Court Criminal Case No. 9 of 2002 considered
R v Pierre Lorde (2006) 73 WIR 28 considered
R v Poucette (2019) ABQB 725 considered
R v Shyback (2018) ABCA 331 considered
R v Smith [1991] BHS J. No. 71 considered
R v Taniskishayinew (2018) BCSC 296 considered
R v Townsend [2019] EWCA 2093 considered

Raphael Neymour v Regina SCCrApp. No. 172 of 2010 considered
Roger Naitrim et al v The Queen HCRAP Nos. 5, 6 and 8 of 2006 considered
Tenelle Gullivan v R No. 5 of 2005 considered
The Attorney General v Larry Raymond Jones et. al. SCCrApp. Nos. 12, 18 & 19 of 2007 explained & considered

per Moree, CJ: Since the delivery of the judgment in The Attorney General v Larry Raymond Jones, Patrick Alexis Jervis & Chad Goodman the courts have recognized that the range of sentences set out therein for the offence of manslaughter is a baseline and a sentencing judge judge can impose a higher or lower sentence provided that cogent reasons are given. The guidelines set out in Larry Raymond Jones provide assistance to a judge in arriving at an appropriate tariff for a particular accused person convicted of either murder or manslaughter in a particular case. Further, when properly applied, the guidelines seamlessly co-exist with the discretion of the sentencing judge in order to achieve the ultimate objective of justice in criminal cases.

In the present case the learned judge was correct in accepting the sentencing guidelines laid down in Larry Raymond Jones as the baseline; and she was right to accept that in certain circumstances a sentencing judge can deviate from those guidelines. Having read the sentencing ruling in its entirety it is clear that the judge adequately explained her reasons for deviating from the range set out in Larry Raymond Jones and on the facts of this case the sentence, although lenient, may not be considered unduly lenient.

Even if the sentence was considered unduly lenient, an appellate court must take the additional step of determining for itself whether it would be right to exercise its discretion to increase the sentence. Having regard to the facts of this case the Court should decline to exercise its discretion to increase the sentence.

A.G.'s Reference No. 20; Stephen Ronald Roast (1992) 13 Cr App. R. (S) 377 applied
Andrew Knowles v Regina SCCrApp No. 73 of 2015 mentioned
Andy Francis v R SCCrApp. No. 133 of 2009 considered
Attorney General v Quincy Todd SCCrApp. No. 56 of 2010 considered
Attorney General's Reference No. 4 of 1989 (1990) 11 Cr. App. R. 366 applied
Attorney General's Reference No. 16 of 1992 (1993) 14 Cr App R (S) 137 applied
Aubrey Darling v R SCCrApp No. 155 of 2017 mentioned
Burton v R, Nurse v R (2014) 84 WIR 84 considered
Caryn Moss v The Director of Public Prosecutions SCCrApp. No. 230 of 2018 considered
Crisnell Desir Criminal No. 688 of 2009 mentioned
Denie Osias v Regina SCCrApp & CAIS No. 309 of 2014 considered
Donnell Rolle v R [2011] 3 BHS J No. 25 mentioned
Forrester Bowe and Trono Davis v The Queen [2006] UKPC 10 mentioned
Mikiko Black v R SCCrApp No. 40 of 2014 considered
Murdock v R [2003] NICA 21 considered
R v Fanel Joseph Criminal No. 43/2/2012 mentioned
R v Gumbs (1927) 19 Cr. App. R. 74 considered
Raphael Neymour v The Attorney General SCCrApp No. 172 of 2010 considered
Tenelle Gullivan v R No. 5 of 2005 mentioned
The Attorney-General v. Frederick Derrick Francis SCCrApp. No. 2 of 2007 considered
The Attorney General v Kevin Smith SCCrApp. No. 261 of 2012 applied

The Attorney General v Larry Raymond Jones, Patrick Alexis Jervis & Chad Goodman SCCrim App Nos. 12, 18 & 19 of 2007 applied
The Attorney General v Vilner Desir and Delano Taylor SCCrApp No. 45 of 2015 applied
Young v Bristol Aeroplane Co. Ltd. [1944] KB 718 considered

per Crane-Scott, JA: It is very doubtful whether the Court in The Attorney General v Larry Raymond Jones et. al. ever intended to lay down a comprehensive sentencing "guideline" for manslaughter offences. The so called guideline judgment in Larry Raymond Jones provides no guidance whatsoever in relation to where along the suggested sentencing continuum certain categories of manslaughter offences might lie. Further, the so-called "guideline" makes no attempt to differentiate between for example, unintentional homicides, manslaughter by diminished responsibility or by provocation; or the special provisions of section 299 of the Penal Code. Having regard to these deficiencies, if guidelines were indeed *set* in the preceeding 7 years, it is hard to avoid the conclusion that they were not as comprehensive as they should have been and that the 18 to 35 year range is somewhat selectively drawn.

Even if the 18 to 35 year range in Larry Raymond Jones was intended to lay down a firm "guideline" for manslaughter, it is in effect no more than a guide and it certainly does not rise to the level of a binding principle of law. Simply put, "guidelines" do not fetter the sentencing discretion of a Supreme Court judge, whose role alone it is to determine the appropriate sentence to be passed in individual cases, having applied his or her mind to all the relevant material, including reported cases, any relevant sentencing guidelines and other matters which could reasonably be considered appropriate in the circumstances.

Further, it does not follow from the mere fact that a sentence falls below the suggested range identified in Larry Raymond Jones, that the sentence is *ipso facto* wrong in principle or is unduly lenient. Irrespective of whether the case is a guideline or not, the task of this Court is to determine whether the judge exercised her discretion reasonably and whether the sentence appealed from was wrong in principle; or was unduly lenient as the case may be.

While the 7-year sentence may appear lenient it is not unduly lenient as it falls within the range of sentences previously imposed in this jurisdiction for manslaughter. The judge's discretion was exercised reasonably and disclosed no error of principle and the sentence she imposed was not unduly lenient.

Attorney General's Reference No. 4 of 1989 [1990] 11 Cr. App. R. 366 mentioned
Christine Johnson Alcock v R Criminal Appeal No. 30 of 2001 mentioned
Denie Osias v. Regina [2017] BHS J. No. 75 considered
Maxo Tido v. Regina SCCrApp No. 12 of 2006 mentioned
Naitrim et al v The Queen HCRAP Nos. 5, 6 and 8 of 2006 applied
Tenelle Gullivan v R No. 5 of 2005 mentioned
R v. Fanel Joseph Criminal No. 43/2/2012 mentioned
Raphael Neymour v. Regina SCCrApp No. 172 of 2010 mentioned
The Attorney General v Larry Raymond Jones et. al. SCCrApp. Nos. 12, 18 & 19 of 2007 explained & considered
Young v Bristol Aeroplane Co. Ltd. [1946] AC 163 distinguished

J U D G M E N T

Judgment delivered by the Honourable Sir Michael Barnett, P:

1. This is an appeal by the Attorney General on behalf of the Crown against a sentence of seven years imprisonment for manslaughter which was imposed by a trial judge. The ground is that **"the sentence passed was unduly lenient and further that there are no strong mitigating factors or other cimcumstances making this respondent deserving of such great degree of leniency".**

2. The facts as taken from the judge's sentencing ruling are that on Tuesday, 6 November 2007, at approximately 6:00 a.m. Claude Gray, (the respondent), who at the time was aged 31, went to the home of his friend, Theophilus McKenzie situated Thompson Lane off East Street. While at the residence of McKenzie the respondent had a verbal dispute over the purchase of rocks, cocaine rocks. The dispute escalated and the respondent stabbed McKenzie with a screwdriver. McKenzie succumbed to his injury and the respondent was arrested, interviewed and subsequently charged with murder.

3. On 4 December 2017, some 10 years after the incident, the respondent was placed on trial for murder. The jury found him not guilty of murder but guilty of manslaughter. He was sentenced to 7 years imprisonment.

4. The Attorney General appeals against that sentence.

5. The Crown's right of appeal is based on section 12(3) of the Court of Appeal Act. It provides:

> **"(3) The Attorney-General on behalf of the Crown may, with the leave of the court appeal to the court against any sentence passed after the coming into operation of this section on a person —**
>
> > **(a) convicted on information in the Supreme Court; or**
> >
> > **(b) sentenced by the Supreme Court under subsection (2) of section 218 of the Criminal Procedure Code Act,**
>
> **unless the sentence is one fixed by law."**

6. The basis of the Crown's appeal is summarized in its written submission.

7. It says:

"There are no exceptional circumstances in the instant matter which the learned trial judge considered when passing sentence on the respondent. Thus there was no basis for the same going below the *required* range of sentencing. Consequently, the Appellant submits that it is evident from the sentence passed that the learned trial judge failed to attach sufficient weight to the circumstances of the case and the serious nature of the offences committed."

Having regard to the aforementioned facts, it is humbly submitted that the learned trial judge ought to have attached a greater weight to the following primary aggravating factors, namely:

1. The seriousness of the offence;

2. That the respondent was armed with a screwdriver at the time of the offence;

3. That the respondent stabbed the deceased and caused his death;

4. The high level of crime in respect of the offences of murder and manslaughter

5. The fact that the Respondent showed no remorse for his actions

It is further submitted that the mitigating elements identified by the judge did not justify so drastic a departure from the regime laid out by this Honourable Court in Raymond Jones and could only have reduced it to thirty years in any event." [Emphasis added]

8. In essence, the Crown's appeal rests squarely on the efficacy and authority of the range set out in the decisions of the court in **The Attorney General v Larry Raymond Jones et. al.** SCCrApp. Nos. 12, 18 & 19 of 2007, delivered on 23 October 2008.

9. It is imperative to set out in full the judge's sentencincing ruling in this matter in which she explains in full the factors she took into account in imposing that sentence. The trial judge said, starting at page 319:8:

"…The probation report, Ms. Carlisa Simmons, Senior Probation Officer in the Department of Rehabilitative and Welfare Services presented the probation report for Claude Lawson Gray. The report reflected that Claude

Lawson Gray was 41 years old, born to the parentage of Lawson Gray and one Bridgette Miller.

He is the second child of six maternal siblings. Married to Mrs. Janice Gray. The biological father of Mrs. Claudisha Gray, the stepfather and Grandfather to four grandchildren. He matriculated through the public educational system. He discontinued his education after he was suspended for fighting in the 10th grade at the AF Adderley Junior and Senior High School.

Claude Gray's report also reflected secured employment in the field of construction as a helper, performed landscaping work for a period and at the age of 18 years with the Ministry of Agriculture as a security officer. The position he maintained until the time of his arrest for the matter before this court.

While on bail for said matter, he successfully obtained employment as a painter/landscaper, construction worker and as a handyman at the One Ocean condominium. Married for some 12 years to Mrs. Janice Gray nee Johnson. Mrs. Janice Gray from the report described the convict as an affectionate, helpful supportive and generous. She was said to be her left and right hand. She informed that the convict was not himself at the time of the incident because he had a drug problem.

The court took further note from the report the positive sentiments expressed by parents, daughter, siblings, cousins and neighbors of the convict. Seemingly, the convict was a good, generous, hard working and not problem some individual.

Noted also was there collectively that the convict was not intentional in his actions and should not receive a custodial sentence.

Noted also from the report was the fact that the convict himself admitted to his consumption of alcoholic beverages on the weekend and his abuse of cocaine for approximately two years.

In 2005, he was admitted to the drug unit at the Sandilands Rehabilitation Centre for cocaine abuse. He reportedly completed the six months program which was a requirement for him to retain his employment with the Ministry of Agriculture and Fisheries.

With respect to the offence itself, the court noted that on one hand the convict admitted his guilt and expressed his remorse. But then in his explanations as to what transpired, he gave an account advancing that the deceased was the aggressor and he was merely seeking to defend himself from the advances of the deceased.

As part of this process, the court also heard plea in mitigation by his counsel for and on his behalf.

Counsel for the convict invited the court from onset to deviate from the regular sentencing guidelines with respect to the convict being given a custodial sentence. Advancing that there are exceptional circumstances regarding the convict and the particulars of this case.

In the circumstances of the case, it was submitted that the court should consider granting the condition probation for a period of three years. Reliance was placed on Section 124 of the Penal Code which outlines the discretion of the court with respect to any offender if there are circumstances upon which court deems it necessary so to deviate.

The convict prior to this matter was submitted was an individual of good character with no previous convictions. He was not a violent person although he struggled with alcohol and substance abuse.

The incident at hand was not premeditated and occurred only because the convict was said to have been under the influence of alcohol and drugs.

Sentencing. It was submitted to the court in respect of this matter ought to be one of rehabilitative or restoration. The mitigating factors outweigh the aggravating factors. The convict expressed remorse and he was sorry for what occurred.

The instrument used was that of a screw driver and not the commonly used instruments such as a knife or gun. The incident they say occurred in the heat of the moment simply because the convict was impaired.

Reliance was placed on the case of Patrick McGregor where the convict relative to this matter was placed on five years probation. That matter was appealed by the Crown but subsequently they withdrawn.

Counsel advanced that notwithstanding the sentence stood.

She further submitted for or on his behalf the convict for some 14 years was on bail, awaiting bail and at no time was in breach of any of the conditions of his bail or the law for that matter.

He, during this time, built a life with a wife and family. He was gainfully employed and has shown by the way he lived that he intended on being a productive member of society. It was advanced that no real purpose would be served with him languishing in jail. The convict wants deserving given all the circumstances of the case to be given a noncustodial sentence. And on his behalf, counsel asked the court for mercy that the convict would have made a mistake.

The Crown in response thereto submitted to the court that a custodial sentence for the offence was more appropriate and the court should restrain from making a probation over in favor of the convict. They say that the convict is not a fit and proper person for the court to exercise it's discretion below the guidelines delivered by the Court of Appeal in Larry Raymond Jones.

There was nothing that came before the court that justified exceptional circumstances so much so that the court ought to go below the sentencing guidelines.

They further submitted that alternative sentences are designed for minor offences and not for serious offences such as murder or manslaughter.

The sentence they say must be proportionate to the gravity of the offence. In support of their position, the Crown identified what was considered as aggravating and mitigating in this case. Aggravating factors that they outlined as being the seriousness of the offence. The commission of the offence that weapon used was that of a screwdriver and the high level of crime particularly that of homicide. They wanted the court to note that charge was one of murder which was reduced to manslaughter by the jury and that there was really no remorse shown by the convict for his actions. The one single mitigating factor they advanced was that the convict had no previous convictions.

What are the sentencing guidelines? The maximum penalty for manslaughter is in accordance with Section 293 of the Penal Code is life imprisonment. However, the case of Larry Raymond Jones, Supreme Court number

12, 18 and 19 of 2017 has outlined the guidelines in respect of persons convicted of manslaughter. Sentences range from 18 to 35 years imprisonment. Consideration also must be given to the character of the convicted person. The circumstance with which the offence were committed and whether the convicted person showed any remorse for the killing of that person which are top part of the sentencing judge's deliberations.

The court, during it's deliberation of this matter, took note of the probation report to the extent that the convict was indeed a 41 year old married man with a wife and family. He was gainfully employed prior to the arrest of the matter and subsequent there to while on bail pending trial.

The convict was obviously a person of good character prior to his convictions with no antecedents or prior convictions or pending matters. He, however, struggled with alcohol and substance abuse. The very issue of which this particular incident occurred rocks or cocaine rocks. While the convict from the evidence was under the influence at the material time as a result of his consumption of either alcohol or drugs.

The court also noted with respect to the current offence notwithstanding his admission of guilt or remorse for what occurred. He maintains that it was the deceased, Theophilus McKenzie, who was the aggressor and he was only defending himself against the acts of the deceased towards him.

As part of its deliberations, the court had to give consideration to what is indeed the purpose of sentencing. The court, during its deliberation, was indeed cognizant of that well established principle that sentencing always must be proportionate to the gravity of the offence and promote a sense of responsibility to the offender for the offence committed.

The object of sentencing is to promote respect for the law and maintain order, maintain a peaceful and safe society and discourage the act of crime with the imposition of sentences. Deeply rooted within this purpose are essentially the consent of the concept of deterrence, retribution, prevention and rehabilitation.

The court, therefore, having considered the probation report, the plea in mitigation by defence counsel, the

submissions of the Crown counsel, the authorities of Larry Raymond Jones, Supreme Court appeal. The Attorney General v Kevin Smith, Supreme Court Appeal number 2611 of 2012, the Attorney General v Patrice McGregor number 43 of 2010, R v C., R v Prince Hepburn, Supreme Court number 79 of 2013, the certificate of convictions for Crisnell Desir, Criminal number 688 of 2009, the Crown v Fanel Joseph 432 of 2012. In which the first of those certificates there was a conviction for manslaughter by reason of [provocation] and a four year probation order was granted relative to the second certificate of Fanel Joseph.

The convict in that matter had pleaded guilty to manslaughter and had been given a ten years probation. I also, as part of my deliberations, considered a case from the Eastern Caribbean from the Supreme Court in Dominica. The State v Clement Lavient Pierre 2012, which was somewhat similar in relation to this matter before the court. The original charge being that of murder which has been reduced to manslaughter.

And in that case given, the aggravating and mitigating factors, that convict therein had been sentenced to 12 years imprisonment.

The court also considered the mitigating and aggravating factors as it pertains in this case. The clean record of the convict. The circumstances under which the offence was committed and finally all of the matters touching and concerning the sentencing process together with the court being of the view that the convict, all things considered is a person who is capable of rehabilitation and can redeem himself and reformed subject to his submitting himself for treatment for substance abuse.

All of those factors taken into consideration and the court not forgetting that a life has indeed been lost, the life of Theophilus McKenzie, the court will, given all of the circumstances, hereby, deviate from the guidelines range of 18 to 35 years as outlined in the case of Larry Raymond Jones and will therefore exercise it's discretion to a lower range of seven years of imprisonment for Claude Lawson Gray to take effect from the day of conviction. That date being the 11th of December, 2017.

You are, therefore, sentenced to seven years imprisonment to take effect from the 11th of December, 2017. In essence, it would mean that if you are to be of

good behavior during that period of time, you will receive one third off and therefore you will serve, at that stage, approximately about four years.

I had to take into consideration that a life was indeed lost but I do believe that you can redeem yourself and that you can be reformed and that you can come out and continue thereafter to be a good and productive citizen and make a valuable contribution to this society.

I do hope that during your period of incarceration, you will put your time to constructive use and you will reflect and you will, at the end of this, ensure that you are a better person. That is my hope."

10. The approach of an appellate court in considering an appeal on the ground that a sentence was unduly lenient was considered by this Court (differently constituted) in **Raphael Neymour v Regina** SCCrApp. No. 172 of 2010.

11. In considering the Attorney-General's appeal the Court said:

"25. In the case of Attorney General v Quincy Todd SCCrm App No. 56 of 2010 where a similar application was brought by the Attorney General this court pointed out that the provisions of s 12(3) are in "pari materia' to section 36(1) of the English Criminal Appeal Act 1988 which provides:

(1) If it appears to the Attorney General

(a) that the sentencing of a person in a proceeding in the Crown Court has been unduly lenient;

(b) he may, with the leave of the Court of Appeal, refer the case to them to review the sentencing of that person; and on such a reference the Court of Appeal may

(c) quash any sentence passed on him in the proceeding; and

(d) in place of it pass such sentence as they think appropriate for the case and as the court below had power to pass when dealing with him.

26. A good starting point therefore when considering whether a sentence is unduly lenient is the Attorney General's Reference No. 4 of 1989 reported at (1990) 11

Cr. App. R 366. There Lord Lane CJ, stated what the approach of the English Court of Appeal ought to be in exercising the power conferred by section 36(1). He said at page 371:

> **'The first thing to be observed is that it is implicit in the section that this Court may only increase sentences which it concludes were unduly lenient. It cannot, we are confident, have been the intention of Parliament to subject defendants to the risk of having their sentences increased – with all the anxiety that that naturally gives rise to – merely because in the opinion of this Court the sentence was less than this Court would have imposed. A sentence is unduly lenient, we would hold, where it falls outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate. In that connection regard must be had to reported cases, and in particular to the guidance given by this Court from time to time in the so-called guideline cases. However it must always be remembered that sentencing is an art rather than a science; that the trial judge is particularly well placed to assess the weight to be given to various competing considerations; and that leniency is not in itself a vice. That mercy should season justice is a proposition as soundly based in law as it is in literature.**
>
> **The second thing to be observed about the section is that, even where it considers that the sentence was unduly lenient, this Court has discretion as to whether to exercise its powers. Without attempting an exhaustive definition of the circumstances in which this Court might refuse to increase an unduly lenient sentence we mention one obvious instance; where in the light of events since the trial it appears either that the sentence can be justified or that to increase it would be unfair to the offender or detrimental to others for whose wellbeing the Court ought to be concerned.'**

Finally, we point to the fact that, where this Court grants leave for a reference, its powers are not confined to increasing the sentence.

27. In the Attorney General's Reference No. 16 of 1992 (1993) 14 Cr App R (S) 137 the English Court of Appeal stated:

> **'…where this Court is asked to review a sentence on an Attorney-General's reference, and decides that it must be increased, allowance should be made for the fact that the offender has to be sentenced on a second occasion, that he will have had a second period of suspense awaiting the decision of the court, and here that he is a man who, having been allowed his liberty after his trial, now finds himself called upon to serve a sentence of imprisonment."**

12. The Court in **Raphael Neymour** then referred to Lord Lane's decision in **Attorney General Reference No. 20 Stephen Ronald Roast** (1992) 13 Cr. App. R (S) 377 where the court held that a sentence was unduly lenient. In that case Lord Lane CJ had this to say:

> **"We, as the words of Act indicate, have discretion in this matter. We first of all have to decide whether the sentence was too lenient. We then have to decide whether it was unduly lenient. Even in those circumstances we still have a discretion as to whether we should order the sentence to be increased or not.**
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> **Our view in this case is that this sentence was too lenient. We do not however think that it fell so far below what might properly be imposed by way of sentence as to justify our interfering with the sentence so as to increase it. We mention in that connection this fact, that we have said frequently, if not on every occasion when these cases have come before us on the Attorney General's reference, that one of the features which we take into account is the fact that this is, so to speak, the second occasion when the offender has had to be worried, and worried no doubt he is as to the length of sentence which is to be imposed upon him: first of all at the trial and then again before this Court on the Attorney General's reference."**

13. In giving the majority judgment of the Court on the appeal against sentence in **Prince Hepburn v Regina** SCCrApp. No. 79 of 2013, Mr. Justice Adderley described the sentencing function and the factors to be considered in arriving at an appropriate sentence at paragraph 36 of the judgment:

> **"36. In exercising his sentencing function judicially the sentencing judge must individualize the crime to the particular perpetrator and the particular victim so that he can, in accordance with his legal mandate, identify and take into consideration the aggravating as well as the**

> **mitigating factors applicable to the particular perpetrator in the particular case. This includes but is not limited to considering the nature of the crime and the manner and circumstances in which it was carried out, the age of the convict, whether or not he pleaded guilty at the first opportunity, whether he had past convictions of a similar nature, and his conduct before and after the crime was committed. He must ensure that having regard to the objects of sentencing: retribution, deterrence, prevention and rehabilitation, that the tariff is reasonable and the sentence is fair and proportionate to the crime. Each case is considered on its own facts."**

14. In submitting that the sentence was unduly lenient the Crown relies heavily on the judgment of this court in **Larry Raymond Jones** which has been described as "highly authoritative guidance given by this Court".

15. To properly assess the Crown's challenge to the sentence, it is necessary to consider the legal impact of the judgment in **Larry Raymond Jones.** In that case the Court of Appeal was considering what was the appropriate sentence for the offence of murder after the Privy Council had held that the death penalty was not mandatory. Prior to the ruling in **Forrester Bowe and Trono Davis v The Queen** [2006] UKPC 10, the courts of The Bahamas automatically imposed the sentence of death on persons convicted of murder. All persons convicted of murder and sentenced to death had to be resentenced. The Court of Appeal was considering three appeals from persons who had previously been convicted of murder and sentenced to death. Those three persons were appealing the sentences imposed on them at the resentencing.

16. The Court used that opportunity to give guidance to the lower courts on the proper range of sentences for persons who had been convicted of the heinous and depraved offence of murder.

17. In doing so the Court said:

> **"13. In our judgment, bearing those principles in mind, the discretionary death penalty should be reserved for the "worst" cases of murder of which we have given some examples in our judgment in Maxo Tido v Regina (SCCrApp. No. 12 of 2006) delivered on 14 October, 2008.**
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> **14. In the three cases dealt with in this judgment, at the re-sentencing stage, the sentence of death could not be imposed in any of them, since the respondents had remained in prison for more than five years on death row following their conviction for murder. In the cases of Jervis and Jones, their sentences of death had been commuted to life imprisonment by the Governor General**

acting on the advice of the Prerogative Committee on Mercy in accordance with Articles 90 to 92 inclusive, of the Constitution and in light of the principle expounded by the Privy Council in Pratt and Morgan v The Queen [1994] 2 AC 1 as applied to The Bahamas in Trevor Pennerman Fisher v Regina cited above. On the one hand, as noted in Maxo Tido's case, there are no statutory guidelines to which a judge may turn for assistance in arriving at an appropriate tariff for a particular accused person convicted of murder in a particular case.

15. On the other hand, it must be noted that over the past 7 years, this court has set guidelines in respect of persons convicted of manslaughter. Sentences passed or upheld by this court during that period range from 18 years to 35 years imprisonment, bearing in mind the character of the convicted person, the circumstances in which the offence was committed and whether the convicted person showed any remorse for the killing (e.g., by pleading guilty at the earliest opportunity) to name some of the usual considerations to be taken into account by the sentencing judge.

16. We accept that some cases in which accused persons are convicted of manslaughter instead of murder are as heinous as some murders but they are able to bring themselves within one or more of the partial excuses in the Penal Code such as provocation, diminished responsibility of excessive self-defence, to name a few.

17. In our judgment, where, for one reason or another, a sentencing judge is called upon to sentence a person convicted of a depraved / heinous crime of murder and the death penalty is considered inappropriate or not open to the sentencing judge and where none of the partial excuses or other relevant factors are considered weighty enough to call for any great degree of mercy, then the range of sentences of imprisonment should be from thirty years to 60 years, bearing in mind whether the convicted person is considered to be a danger to the public or not, the likelihood of the convict being reformed as well as his mental condition. Such a range of sentences would maintain the proportionality of the sentences for murder when compared with sentences for manslaughter."
[Emphasis added]

18. It is paragraph 15 of that judgment that the Crown relies upon to sustain its argument that the sentence of seven years for manslaughter is unduly lenient and should be increased by this Court.

19. I regret that I do not consider that paragraph 15 has the authoritative effect of preventing the trial judge from imposing a sentence that is below 18 years without exceptional circumstances as suggested by the Crown.

20. At the outset it must be recognized that in **Larry Raymond Jones** the Court did not have before it for actual consideration an appeal against sentence on a conviction for manslaughter.

21. Although in paragraph 15 the Court said **"it must be noted that over the past 7 years, this court has set guidelines in respect of persons convicted of manslaughter"**, I have not seen any judgment of this Court prior to the decision in that case which sets or purports to set guidelines for sentences for manslaughter. None were cited in that paragraph or in that judgment. There is nothing in that paragraph or in that judgment which indicates how the guidelines should be applied by a sentencing judge. For example, should a homicide arising out of a domestic dispute or drug abuse be treated in the same manner as a homicde arising out of a criminal act such as robbery where in the former cases there was no intention to kill? Should a conviction for manslaughter by way of provocation have a minimum of 18 years unless there are exceptional circumstances? Should a manslaughter conviction arising out of the use of a gun or knife be treated in the same way as a homicide caused by an otherwise non lethal weapon?

22. No such guidance as one may expect from a court setting authoritative sentencing guidelines to be followed by lower courts or even itself is to be found in that paragraph or in the judgment.

23. In my judgment, it is unlikely that the Court was intending by that paragraph to impose a range which was intending to bind judges. It is also unlikely that the Court was laying down as guidance to sentencing judges a minimum sentence of 18 years for the offence of manslaughter, save in exceptional circumstances. If the Court was seeking to establish an authoritative guideline for manslaughter it is unlikely that the Court would have limited itself to a review of only the immediate seven years prior to the judgment; nor in my judgment would it have ignored sentences passed by trial judges which have not been appealed to this Court.

24. A sentencing guideline that has a sentence of 18 years at the lower end of the range would be unusually high and inconsistent with sentencing guidelines in other jurisdictions in the region and elsewhere.

25. For example in Jamaica the range starts as low as 5 years and in Barbados, the Court of Appeal in **R v Pierre Lorde** (2006) 73 WIR 28 gave guidelines for sentencing in manslaughter convictions and said (iter alia):

> **"4. In a contested trial where no intrinsically dangerous weapon was used and there are mitigating features, the range of sentence should be 8 to 12 years. An early plea of guilty in this type of case may attract a sentence of less than 8 years."**

26. In **Kenneth Samuel v The Queen** Criminal Appeal No. 7 of 2005 Barrow JA (as he then was) noted that **"In England, for example, it is established that the range of sentences for manslaughter committed after provocation is between three and seven years imprisonment".**

27. In my judgment the Court in the **Larry Raymond Jones** decision was simply determining the appropriate range of sentences for murder and in doing so, indicated that it must be proportionate to sentences for manslaughter. The Court, in reviewing the past seven years only, was able to make a determination that the range of sentences for manslaughter had been between 18 and 35 years.

28. I note that even within the seven year period prior to **Larry Raymond Jones** there had been a sentence for manslaughter which was less than 18 years. In **Christine Johnson Alcock v R** Criminal Appeal No. 30 of 2001, delivered on 12 February 2002, a 15 year sentence was imposed by the Court of Appeal when it substituted a conviction for murder and imposed a new sentence for the manslaughter conviction. Outside of the seven year period in **R v Smith** [1991] BHS J. No. 71, this Court imposed a sentence of 8 years for manslaughter. In that case the appellant, after a fuss between the parties, administered a beating with either a stick or a piece of baseball bat to the deceased. The deceased was taken to the hospital where she died the next day. The appellant was convicted of murder and on appeal this Court reduced the sentence to manlaughter and imposed a term of imprisonment of 8 years.

29. In addition to sentences of less than 18 years imposed by the Court of Appeal itself, the Court was aware that it had affirmed sentences of less than 18 years for manslaughter imposed by a trial judge. In **Dominique Moss and Keith Lotmore v R** SCCrApp. Nos. 11 & 14 of 2004**,** delivered on 28 October 2004, Lotmore was sentenced to 6 years imprisonment for manslaughter and his sentence was affirmed by the Court.

30. Given the myriad of human experiences that may give rise to a homicide and a conviction of manslaughter, I am not persuaded that the Court of Appeal was intending to make the minimum sentence for manslaughter 18 years, only to be departed from in exceptional circumstances. It did not say so in paragraph 15 of **Larry Raymond Jones** and there is, in my view, no reason to hold that it did.

31. As will be shown later in this judgment given the range of actual sentences imposed for manslaughter since the judgment in **Larry Raymond Jones,** which have been less than 18 years, even if it was intended to be a guide as to the lower end of the range the courts have,

since that decision, departed from that 18 year minimum. This, in my judgment, is indicative that the decision in **Larry Raymond Jones** does not in fact have the authoritative effect as regards sentences for manslaughter which a trial judge is of the view warrants a sentence of less than 18 years. These authorities do suggest that the failure to articulate exceptional circumstances is not fatal to the exercise of the judges sentencing discretion.

32. But, even if we were to regard the decision in **Larry Raymond Jones** as providing some kind of authoritative 'guideline' for sentences for manslaughter of howsoever authority, it is settled law that a sentencing judge has the power to impose a sentence that is outside the range set out in the 'guidelines' contained in **Larry Raymond Jones.** Although many authorities state that when departing from guidelines a judge in his sentencing ruling should explain why he is imposing a sentence outside the range; the fact that the judge may not explain his departure does not automatically make the sentence imposed unduly lenient or unduly harsh.

33. Guidelines are not the ten commandments. The failure to adhere to them or to identify exceptional circumstances to explain departure does not automatically result in a sentence being set aside by an appellate court. The principle upon which the appellate court acts remains the same. It is not whether the sentence falls within the guidelines, it is whether the sentence is so lenient or so harsh that no reasonable judge could have imposed such a lenient sentence. Or, to use the language of Lord Lane in **Attorney General's Reference (No. 4 of 1989)** 90 Cr. App. R 366 , whether the sentence **"falls outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate."**

34. I agree with the observation of the Court of Appeal of Northern Ireland in **Murdock v R** [2003] NICA 21 when it said:

> **"13 (d) Guidelines are of use in maintaining a degree of consistency in sentencing, but they are not to be slavishly followed, since the sentencer in any given case has to determine what is appropriate for the individual case before the court. Mitigating and aggravating factors in the particular case will have to be taken into account in determining the final disposition. Reported previous decisions may provide a benchmark, but it should be observed that in some reported cases there may be unstated factors, e.g. co-operation with the police, which have influenced the length of sentence. It should also be borne in mind that levels of sentence may move upwards, or downwards, depending on the prevalence and danger to the public of any type of offence."**

35. These same sentiments were expressed Chief Justice of England in **Millberry v R; R v Morgan; R v Lackenby** [2002] EWCA Crim 2891 where he said:

> **"34. Before concluding our general guidance with regard to sentencing on rape and turning to the cases of the**

> **individual appellants, we would emphasise that guidelines such as we have set out above can produce sentences which are inappropriately high or inappropriately low if sentencers adopt a mechanistic approach to the guidelines. <u>It is essential that, having taken the guidelines into account, sentencers stand back and look at the circumstances as a whole and impose the sentence which is appropriate having regard to all the circumstances... Guideline judgments are intended to assist the judge arrive at the correct sentence….</u>" [Emphasis added]**

36. Indeed in **Roger Naitram et al v The Queen** HCRAP Nos. 5, 6 and 8 of 2006 the Court of Appeal of the Eastern Caribbean cited with approval the views of the English Chief Justice in **Milberry** and then said:

> **"17. …Sentencing guidelines should not be applied mechanistically because a mechanistic approach can result in sentences which are unjust. Having taken the guidelines into account, the sentencing judge is enjoined to look at the circumstances of the individual case, particularly the aggravating and mitigating factors that may be present and impose the sentence which is appropriate. It follows therefore that a sentencing judge can depart from the guidelines if adherence would result in an unjust sentence. The existence of a particularly powerful personal mitigation or very strong aggravating factors may be a good reason to depart from the guidelines. Clearly the suggested starting points contained in sentencing guidelines are not immutable or rigid. Where the particular circumstances of a case may dictate deviating from the guidelines, it would be instructive for the sentencing judge to furnish reasons for so departing."**

37. The exposition of the law was perhaps best expressed in the judgment of the Caribbean Court of Justice in **Burton v R, Nurse v R** (2014) 84 WIR 84 where the Court said:

> **"[14] As has been said repeatedly, the guidelines are only guidelines and not meant to be applied slavishly to every case. They provide assistance to the sentencing judge not rules from which departure is prohibited. No guidelines can ever cover the totality of circumstances in which criminal ingenuity and recklessness may be expressed. We accept the essence of the opinion offered by Sir David Simmons CJ in Bend and Murray v R when he said:**
>
> > **'We have issued these guidelines on sentences for manslaughter merely to indicate the range or**

> **scale of sentences. Judges will still be free to tailor sentences according to the facts of a particular case. It must be remembered that, in our system, judicial discretion is at the heart of the sentencing process. That discretion will invite flexibility and, from time to time it will produce inconsistency. These guidelines are intended merely to assist judges and the legal profession, not to bind judges and fetter their discretion. At the end of the day sentencing is very much an art and not a science.'**
>
> **[15] But this is much different from saying that the guidelines lack legal significance or may be disregarded without reason. The guidelines distil important aspects of sentencing principles. When pronounced by the Court of Appeal they constitute rules of practice. Lower courts must have regard to the guidelines. The sacrosanct nature of the discretion of the sentencing judge is preserved in two ways. Firstly, the guidelines indicate a range of sentences that may be appropriate for particular categories of offences and it is for the sentencing judge to decide where on the continuum of the tariff the specific sentence ought to be placed having regard to the peculiarities of the circumstances of the offence and the offender. Secondly, it is perfectly appropriate for the sentencing judge to not follow the guidelines in a particular case if he or she concludes that their application would not result in the appropriate sentence. Public confidence in the criminal justice system must be maintained by the imposition of suitable penalties taking into consideration the penological objectives of protection of the public, deterrence, and rehabilitation of the offender, and it is for the sentencing judge in his discretion to make the call as to the sentence that will come closest to achieving those objectives. However, if the sentencing judge decides to depart from the guidelines established by the superior court then he or she should explain his or her reasons for doing so." [Emphasis added]**

38. Where a judge departs from guidelines and does not expressly state his reason(s) for departing from them, it is still for this Court to determine whether the actual sentence passed is unduly lenient such that no reasonable judge could have imposed it.

39. I have considered the sentencing judge's full and considered ruling. I can identify no error in principle and in its written submissions the Crown has not identified any error in principle. I have set out their argument earlier in this judgment at paragraph 7.

40. In short, the Crown's argument is that since the sentence of seven years was significantly outside the 'required' range in **Larry Raymond Jones**, the sentence is unduly lenient and the judge could not have given proper weight to the relevant factors to be taken into account in sentencing.

41. In considering whether a sentence is unduly lenient or unduly harsh, in my judgment, the Court of Appeal is entitled to look at previous sentences imposed by courts in The Bahamas as well as to sentences imposed by courts in other parts of the common law world. The principles of sentencing are common throughout the common law world and our western societies have more in common with each other than differences. We all face similar problems such as increased crimes, domestic violence, drugs and gang warfare.

42. Whilst we need not "slavishly follow" decisions of other courts in other countries, we cannot be so provincial and insular that we cannot benefit from the experience and wisdom of other courts in sentencing policy.

43. There are several cases where courts in The Bahamas have imposed sentences that were less than 18 years for manslaughter.

44. I have already referred to **R v Smith**,where this Court imposed a sentence of 8 years for manslaughter where the appellant killed the deceased with a baseball bat after an argument. In **Moss and Lotmore** the Court of Appeal imposed a sentence of 25 years against Moss and affirmed a sentence of 6 years against Lotmore, both of whom were convicted of manslaughter.

45. In **Tenelle Gullivan v R** No. 5 of 2005 the appellant was convicted of manslaughter. He was sentenced to a term of six years imprisonment. He appealed against his conviction and the Crown did not appeal against sentence. The Court of Appeal dismissed the appeal and affirmed the conviction.

46. In **R v Crisnell Desir** Criminal No. 688 of 2009 after the decision in **Larry Raymond Jones**, the accused was convicted of manslaughter. On 1 September 2011 he was sentenced to three years' probation and required to keep the peace for another three years afterwards. The Crown did not appeal that sentence.

47. In **R v Fanel Joseph** Criminal No. 43/2/2012 the accused pled guilty to manslaughter. He had stabbed his brother to death. On 17 March 2014 he was sentenced to 10 years probation. Again, this decision was after **Larry Raymond Jones** and the Crown did not appeal.

48. In **Leroy Rolle v The Attorney General** SCCrApp. No. 182 of 2010 the appellant was 17 at the time of the incident. He was convicted of manslaughter arising out of the death of a 22 month old child of a woman in which he had an intimate relationship. The infant was beaten with a belt and an examination showed bruises to the infant's chest, abdomen, leg and forehead. The appellant was sentenced to 25 years imprisonment. He appealed that sentence as being unduly harsh. Although the 25 years sentence was within the range in **Larry Raymond Jones**, the Court of Appeal allowed the appeal against sentence and

substituted a sentence of 10 years imprisonment. The Court of Appeal made no reference to the decision on **Larry Raymond Jones** and proffered no explanation for its departure from the range in **Larry Raymond Jones**.

49. The Court said at paragraph 60:

> **"60. In this case there is hardly any likelihood that this appellant will find himself in a similar situation again. While we accept that he must be punished, his rehabilitation is equally important. He has to live with the agony that he was responsible for the death of a 22 month old infant. We are cognizant of the fact that the trial judge took the circumstances of the offence and the offender into consideration. Nevertheless, there is a distinction between apply principles and overstraining them. This is a case that requires the court to temper justice with mercy. To quote Lord Lane in Attorney General's reference No. 4 of 1989 (1990) 11 Cr. App R 366 "…leniency is not in itself a vice '…that mercy should season justice is a proposition based in law as it is in literature.'**
>
> **In all the circumstance we quash the sentence of 25 years and in its place impose a sentence of 10 years imprisonment. The sentence to begin from the date of conviction."**

50. In **Andrew Knowles v Regina** SCCrApp. No. 73 of 2015 the appellant was convicted of manslaughter and sentenced to 10 years imprisonment. In that case the appellant and the deceased got into an argument which escalated into a fight where the two slapped each other. The deceased left the scene and returned armed with a cutlass. He allegedly slapped the appellant and spanked him with the cutlass. The appellant ran off and returned with a shotgun. The deceased walked in the direction of the appellant and as he got closer the appellant pulled out the shotgun from his pants and according to him made a warning shot in the air and as the deceased continued to advance towards him he shot the deceased in his chest. The appellant appealed his conviction but did not appeal his sentence. The Crown defended the conviction but did not appeal his sentence of 10 years as being unduly lenient. The 10 year sentence was affirmed without comment by the Court of Appeal.

51. In **Aubrey Darling v R** SCCrApp. No. 155 of 2017, the appellant, a police officer, whilst on patrol with other officers, encountered the deceased who appeared to be inebriated and was shouting expletives. The appellant sought to arrest the deceased who then pulled out a pocket knife. Whilst the deceased was being subdued by the appellant and his fellow officer, the appellant took out his gun and shot the deceased. He was convicted of manslaughter and sentenced to 10 years imprisonment. He appealed his conviction but not his sentence. Again, the Crown defended the conviction and did not appeal his sentence as being unduly lenient. His appeal against conviction was dismissed.

52. In **Mikko Black v R** SCCrApp. No. 40 of 2014 the appellant and the deceased were wife and husband. They had an argument and the husband left the house. Upon his return the appellant claimed that she and her husband fought over his shotgun which resulted in the weapon discharging and fatally wounding the husband. The appellant was charged with murder but was acquitted of that charge and convicted on manslaughter. She was sentenced to 12 years imprisonment. The appellant appealed her sentence as being unduly harsh, notwithstanding that it was below the 18 to 35 years range contained in **Larry Raymond Jones.** The Crown did not appeal the sentence as being unduly lenient even though it was below that range. The Court dismissed the appeal against sentence. It said:

> **"78. The appellant was sentenced to twelve years' imprisonment in circumstances where she could have been sentenced to life. It was incumbent on her, therefore, to demonstrate that the Judge somehow got it wrong when she imposed the twelve year sentence.**
>
> **79. The Court differently constituted considered the appropriate sentence for persons convicted of manslaughter in The Attorney-General v Larry Raymond Jones SCCrApp Nos. 12, 18 and 19 of 2007. The Court noted that a range of sentences of between eighteen to thirty-five years which had been imposed on various appellants had been upheld by the Court, "bearing in mind the character of the convicted person, the circumstances in which the offence was committed and whether the convicted person showed any remorse for the killing". I am mindful that there may be cases where a sentencing judge goes below or above the range suggested in Jones' case but it would be expected that cogent reasons for so doing would be provided by the judge. In this case, the Judge gave her indication for the sentence she imposed.**
>
> **81. <u>The appellant has disclosed no reason for this Court to interfere with the sentence imposed by the Judge nor have we detected any error in principle by the Judge in arriving at the sentence she imposed. Hence, we do not interfere with the sentence.</u>**
>
> **82. The appeal against conviction is dismissed; and the sentence of twelve years' imprisonment imposed on the appellant for the manslaughter of the deceased is affirmed." [Emphasis added]**

53. In **Donnell Rolle v R** [2011] 3 BHS J No 25 the appellant was tried for the murder of his wife; the attempted murder of his daughter and step-daughter; and the arson of their home. He was convicted on 6 July 2010, of the manslaughter of his wife and the arson of their home, but acquitted of the attempted murder of the girls. The appellant was sentenced to

fifteen years' imprisonment for manslaughter and three years' imprisonment for arson, to run concurrently with effect from the date of his conviction.

54. In his sentencing ruling the trial judge said:

> **"You have been found guilty and convicted of the offence of manslaughter and arson. The jury have found you not guilty of the offence of attempted murder of your daughter and stepdaughter arising out of the same incident. I confess that I have agonised over the appropriate sentence in this case. The facts are somewhat unique. It cannot be disputed that you set the fire that resulted in the death of your wife. It also cannot be disputed that shortly after, the blaze got out of control, endangering the lives of your wife and children, that you did all you could to try and extinguish that fire so as to rescue them from the perilous situation that was caused by your own actions.**
>
> **You did so in circumstances that exposed your person to harm, and that is no doubt, commendable. I have listened attentively to the submissions made on your behalf, the eloquent plea in mitigation by Mr. Ducille in his plea for mercy and leniency. I must, however, bear in mind that a life was lost as a direct result of your actions and that damage was done to a building. In principle, I am satisfied that a custodial sentence is warranted. No doubt, your children have lost a mother; and while incarcerated, they will be without a father. However, there must be consequences for our actions.**
>
> **Taking all of the circumstances into consideration, this case would seem to fall on the low end of the scale both for sentencing in manslaughter cases and in arson cases. I have, therefore, decided to impose a sentence of 15 years for manslaughter and three years for arson. The sentences are to run concurrently from 6th July, 2010. That is my sentence."**

It is to be noted that in the sentencing ruling the trial judge made no reference to **Larry Raymond Jones** and gave no reason for departing from the range of 18 to 35 years.

55. Rolle appealed his conviction; he also appealed his sentence on the ground that it was unduly harsh. The Crown did not appeal the sentence on the ground that it was unduly lenient as it was outside the range in **Larry Raymond Jones** and the judge did not give any reason for departing from the range.

56. With respect to the appeal against sentence on the ground that it was unduly harsh the Justices of Appeal gave two different answers. The President Dame Anita Allen (with whom Blackman, JA agreed) said:

> **"51 As to the argument that the sentence was excessive, I am of the view that the appellant was fortunate in not being sentenced to a longer term of imprisonment for the death of his wife. Although I believe the sentence was on the lenient side, it was not unduly lenient, and I would not interfere."**

57. Newman, JA on the other hand said:

> **"22 Mr. Ducille submitted that the total sentence of 15 years was excessive. His grounds for doing so were bound up with his submission on the facts that the appellant had committed a "prank." None of the cases to which he referred, in my judgment, had a bearing or connection with the facts of this case. For myself, I have already indicated, the characterization of what occurred as a "prank" sheds little light on the substance of the event. It does little to reduce and even less to explain the gravity of his action. He set fire to a mattress in a confined space when his wife and the children were present. He offered no plea of guilty to manslaughter and thereby deprived himself of the best mitigation. A plea to manslaughter could have been entered at an early stage. It could have saved his step daughter having to give evidence about a deeply traumatizing event and being subjected to hostile cross examination in which she was accused of lying. I recognize that the plea to manslaughter may not have been accepted by the prosecution but candour would have been apparent from the outset of the trial. I am bound to say that more time could be given in many cases to the consideration of a well timed plea of guilty. Further defence counsel, when faced with disagreement from a witness, often (as here) immediately suggest that the witness is lying. Restraint and commonsense would suggest that some thought should be given to the possibility that the witness is mistaken, or, as in this instance, seems likely, the possibility of unreliability flowing from the horrific circumstances and confusion which the young girl had witnessed. I feel bound to observe that in acquitting the appellant of murder I doubt the jury thought the girl was lying. More likely the jury realised she could easily have misread what was occurring in the terror and confusion of the event.**

> **23 <u>In my judgment, in all the circumstances the sentence of 15 years cannot be said to be manifestly excessive and thus give rise to the need for this court to intervene.</u> It follows I would dismiss the appeal against conviction and sentence." [Emphasis added]**

This is particularly significant.

58. The sentencing judge imposed a sentence below the range in **Larry Raymond Jones**. No mention was made of that fact in either judgments of the Court of Appeal. Neither judgment commented on the fact that the sentence was below the **Larry Raymond Jones** range and that the sentencing judge did not express or give any reason or mitigating factors for departing from the range.

59. Allen, P was of the view that the 15 year sentence was lenient, but not unduly lenient. Newman, JA seemed to be of the view that it was excessive but not "manifestly excessive" so as to warrant interference by the appellate court. The Crown did not appeal against sentence and the Court did not exercise its power under section 13(3) of the Court of Appeal Act to increase the sentence to bring it within the range set out in **Larry Raymond Jones.**

60. The fact that the sentencing judge departed from the **Larry Raymond Jones** range and did not give any reason for departing from it did not affect the fundamental question of whether, in all the circumstances of the case, the sentence imposed was unduly harsh or unduly lenient. In determining that question, the Court simply looked at the facts and the sentence and made its determination. This was the same position as was in **Leroy Rolle**.

61. In **Raphael Neymour** John, JA in paragraph 38 of his judgment suggested that no assistance could be obtained from cases where there was no appeal by the convicted person against sentence and where the Crown did not appeal against sentence. This is a view shared by the Chief Justice and some other Justices of this Court. With respect, I do not agree.

62. In those cases where the sentences were lower than 18 years and the convictions were challenged by the accused on appeal to this court, the Crown was obliged to respond to those challenges. If the Crown was of the view that the sentences in those cases were unduly lenient, it would have been obliged to challenge those sentences on the appeals brought by the convicts. The fact that the Crown did not challenge those sentences and this Court did not comment on the leniency of the sentences entitles a sentencing judge and this Court to infer that neither the Crown nor this Court regarded those sentences as being unduly lenient as to warrant interference by an appellate court. Indeed, this Court has on occasion commented on the leniency or propriety of a sentence even where the sentence was not the subject of an appeal. For example in **R v Ingraham** [2004] BHS J No. 385 the Court said:

> **"22 As there was no cross-appeal on sentence we did not disturb the sentence although given the circumstances of the case a sentence of 10 years may appear somewhat lenient"**.

In that case there was a property dispute and the appellant shot the deceased who was unarmed in the back while he was walking away.

63. In my judgment if the court was not able to take account of those cases where the sentencing judge gave what might be considered a lenient sentence, simply because the Crown in its wisdom elected not to challenge the leniency on appeal, it would do a disservice to confidence in the administration of justice. The Crown could allow a plethora of undue lenient sentences by not challenging the same; but because of variable considerations, challenge the propriety of a sentence of a similar nature in respect of a particular person. This is notwithstanding that in similar cases involving different persons, it has not elected to challenge the leniency of the sentence.

64. Given the many instances where courts have departed from the 18 to 35 years range and given sentences for manslaughter below 18 years, the force of the "guidelines" (if they are to be considered such) cannot have the authoritative power suggested by the Crown in determing that the 7 year sentence is unduly lenient.

65. Light or lenient sentences for homicide, though not common, are not unusual nor unheard of in the common law world.

66. In Jamaica in 2019, in the separate unreported cases **R v Rick Dickson** and **R v Garfield Haughton** both men pled guilty to manslaughter after having originally been charged with murder and were both sentenced to 4 years imprisonment. In **R v Fitzroy Manderson** 2019 unreported, Manderson also pled guilty to manslaughter and was sentenced to seven years imprisonment. In addition, in the case of **R v Jeffery Campbell** 2019 unreported, Campbell was sentenced upon conviction for manslaughter to six years imprisonment for the double killing of an elderly woman and her son.

67. In Grenada, in September 2017 in the case of **R v Joylyn James** GDAHCR2017/0018 the accused, a young female, pleaded guilty to manslaughter by negligence. She killed her 2 year old niece while playing with a pellet gun. She was sentenced to 2 years imprisonment which was suspended for two years. She was required to do community service as well.

68. In St. Lucia, in **R v Martie** Hight Court Criminal Case No. 9 of 2002, the accused was convicted of manslaughter after he plunged a knife in the region of the deceased head. Saunders, J (now President of the CCJ) sentenced him 40 hours of community service.

69. The Eastern Caribbean Court of Appeal, on appeal from St. Vincent and the Grenadines in **Kenneth Samuel** reduced the sentence of a man convicted of manslaughter from 25 years to 7 years. He pled guilty to killing his friend and workmate. In that case Barrow JA (as he then was) said:

> **"[18] In the application of these sentencing principles guidelines have been developed that assist a sentencing judge in arriving at a sentence that is deserved, which is to say a sentence that is fair both to the convicted person and to the community, including the family and friends**

> **of the victim. A principal guideline is that there must be consistency in sentences. Where the facts of offences are comparable, sentences ought to be comparable, if rationality is to be served. The objective of consistency has led to the emergence of ranges of sentences. In England, for example, it is established that the range of sentences for manslaughter committed after provocation is between three and seven years imprisonment. The particular facts of a case will determine where in the range the sentencer will come down; thus, an offender who had some time to regain self-control after provocation will attract a heavier sentence than the offender who had no time to regain self-control. An offender who delivers one blow in response will deserve a lesser sentence than one who delivers multiple blows. The weapon used and how likely it was to be lethal may be another factor in determining degrees of culpability and therefore severity of punishment. Similarly, an offender who has a criminal record will not get as much of a reduction from the starting sentence as one who has no criminal record and is widely regarded in his community as a good and caring person. These examples are illustrative and not exhaustive." [Emphasis added]**

70. In Canada in **R v Shyback** (2018) ABCA 331 an accused was convicted of manslaughter after he caused the death of his domestic partner during a fight with her. The trial judge sentenced him to five years imprisonment for manslaughter. The Crown appealed that sentence and the Alberta Court of Appeal increased the sentence to seven years. See also **R v Taniskishayinew** (2018) BCSC 296 where the accused was convicted of manslaughter and sentenced to 4 years imprisonment and **R v Poucette** (2019) ABQB 725 where the accused was convicted of manslaughter and sentenced to 2 years imprisonment and 2 years probation.

71. In Ireland, in **DPP v McGrath** [2020] IECA 41, the DPP appealed a sentence of 5 years for manslaughter on the ground that it was unduly lenient and did not properly reflect the aggravating factors present and the sentencing judge erred in principle. The Irish Court of Appeal allowed the appeal and increased the sentence from 5 years to 7 years.

72. In **R v Townsend** [2019] EWCA 2093, the accused was convicted of the manslaughter of her father, and witness intimidation in relation to her brother-in-law. She later pleaded guilty to an offence of breach of a restraining order in respect of her sister. For these three offences she was sentenced on 20 September 2019 to a total of 2 years 8 months' imprisonment. The specific sentence for manslaughter was 2 years and 6 months. The Attorney General appealed the sentences as being unduly lenient.

73. As to the manslaughter charge, the facts in **Townsend** were that:

> **"5. On 27th December 2017 [the accused] and her father had been out together during the day and were then in his house. [She] lost her temper [and] threw a television remote control at her father. It struck him on the back of the head, causing a cut which immediately began to bleed. [The father] went into the kitchen in order to clean the cut. [The accused] followed him in. In the kitchen she pushed him, causing him to fall to the floor. The result of that assault was that [the father] sustained fractures of six ribs on his right side and the right transverse processes of five of his thoracic vertebrae. There was also some soft tissue bruising to the left side of his chest. The fractured ribs damaged his right lung, with the result that he suffered a pneumothorax. [The accused] did not summon any medical assistance; it was [her father] who dialed 999. When the ambulance arrived, [the accused] pointed to where her father was, but then left the house saying, "No, I can't do this. I haven't got time. I've got to go."**
>
> **6. [The father] was taken to hospital, where the full extent of his injuries was established, and he was admitted…**
>
> **7. …[The accused told her] sister "I pushed him. Yes, I admit that. I did push him out of the way because he was pissing me off and then he landed on the floor." She also said that she had chucked the remote control at their father because she was annoyed with him."**

The English Court of Appeal allowed the appeal and increased the sentence to 4 years and 6 months.

74. I have referred to these cases simply to show that a seven year sentence is not inherently unduly lenient thus reflecting that it must be **"evident from the sentence passed that the learned trial judge failed to attach sufficient weight to the circumstances of the case and the serious nature of the offences committed"** as the Crown has alleged.

75. No doubt the seven year sentence may be considered lenient. The issue is whether it is so lenient that no reasonable judge applying the principles of sentencing could impose such a sentence in the circumstances of this case.

76. I have read the sentencing ruling in its entirety. I see no error of principle nor can it be said that the judge took into account something that she ought not take into account or that she did not take into account something that she ought to take into account.

77. It is clear that the judge in this case was well aware of the decision in **Larry Raymond Jones**. It is clear from her ruling that the judge took into account those aggravating factors identified by the Crown.

78. I cannot accept that those factors in this case were particularly aggravating. Indeed, the judge did find that the respondent expressed remorse over the incident even though he maintained that the deceased was the aggressor and he was defending himself against acts of the deceased towards him. In those circumstances I do not regard that factor as particularly aggravating.

79. The respondent and the deceased were friends. There was drinking and smoking going on at the time. The respondent **"from the evidence was under the influence at the material time as a result of his consumption of either alcohol or drugs".** This is found in the judge's sentencing ruling. No doubt at the time the deceased had also been drinking and using drugs as well.

80. The respondent and the deceased had a fight over a small quantity of drugs which fight got out of hand. In that fight the deceased had a pipe and the respondent had a screwdriver. The fact that he was killed with a screwdriver is not, in my judgment, an aggravating factor. There was no evidence that he brought the screwdriver with him. The screwdriver was at the deceased premises. It was not as if the respondent had a knife or gun with him, weapons calculated to cause harm.

81. But for this incident the respondent had not been found guilty of any offence. He was 31 at the time of the incident. The matter came for trial ten years later. When this matter came for trial the respondent was on bail; having been on remand since November 2007 until December 2008. The person being punished in 2017 was not the same person who committed the offence ten years earlier. Since 2008 he has lived a productive life.

82. In my judgment, even if the range of 18 to 35 years had the force of sentencing guidelines, having regard to sentences imposed by this Court and other courts in similar situations, it cannot be said that the sentence is unduly lenient as it is **"outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate"** as per Lord Lane in **Attorney General's Reference (No. 4 of 1989)**.

83. Certainly, the circumstances of this incident were significantly less egregious than that in the case of **Aubrey Darling,** the police officer who shot a man being arrested while he was on the ground or **Andrew Knowles** who left the fight and came back to the scene with a shotgun. Both of them were convicted of manslaughter and sentenced to 10 years imprisonment. Nor is it more egregious that in **R v Smith** where a woman was killed with a baseball bat and Smith sentenced to 8 years imprisonment.

84. The judge was clearly satisfied that this was a proper case to depart from the range of **Larry Raymond Jones** to achieve a just sentence. As a matter of law she was able to do so if she felt that a just sentence was outside the range set out in **Larry Raymond Jones**. As the

Court of Appeal of the Eastern Caribbean said in **Naitram** "**a sentencing judge can depart from the guidelines if adherence would result in an unjust sentence".**

85. A 30 years sentence, as suggested by the Crown, would, in my judgment, be unjust.

86. Having regard to all of the authorities cited in this judgement, I am satisfied that the 7 year sentence was not unduly lenient.

87. Further, even if I had found that the seven year sentence was unduly lenient is does not follow that this Court should set it aside. As Lord Lane said in **Attorney General's Reference (No. 4 of 1989)**:

> **"…even where it considers that the sentence was unduly lenient, this court has discretion as to whether to exercise its powers. Without attempting an exhaustive definition of the circumstances in which this Court might refuse to increase an unduly lenient sentence, we mention one obvious instance; where in the light of events since the trial it appears either that the sentence can be justified or that to increase it would be unfair to the offender or detrimental to others for whose wellbeing the court ought to be concerned". [Emphasis added]**

88. This incident took place about than 13 years ago. After being incarcerated since November 2007 the appellant was granted bail in December 2008 and, as the judge, said had lived a productive life. No doubt the sentencing judge had that in mind at the time of sentencing. Having regard to the many instances where this Court has exercised leniency in convictions for manslaughter and imposed sentences below the range in **Larry Raymond Jones,** including sentences of probation, it cannot be said that it would be an affront to the interest of justice if this Court did not set aside this sentence.

89. As courts have repeatedly said **"…leniency is not in itself a vice. That mercy should season justice is a proposition as soundly based in law as it is in literature."**

90. I would not interfere with the decision of the sentencing judge. I would dismiss the appeal and affirm the sentence of 7 years as imposed by the learned judge.

91. As a postscript to this judgment, I note that it is necessary for there to be considered sentencing guidelines not only for homicide cases of murder, manslaughter and attempted murder; but also for cases of sexual offences and offences such as robbery, armed robbery and theft. Such gudelines can only be created after careful study and analysis as has been done in other jurisdictions. In this regard, I am confident that we can obtain much assistance from the guidelines in other countries which were created after such careful studies in their countries.

The Honourable Sir Michael Barnett, P

Judgment delivered by the Honourable Sir Brian Moree, CJ:

92. The narrow point in this appeal is whether the sentence of seven years imprisonment imposed by the trial judge on the respondent upon his conviction of manslaughter is unduly lenient. It raises important issues relating to the proper approach by a trial judge to the authoritative guidance given by this Court (differently constituted) in **The Attorney General v Larry Raymond Jones, Patrick Alexis Jervis & Chad Goodman** SCCrApp. Nos. 12, 18 & 19 of 2007 ("**Larry Raymond Jones**") when sentencing persons convicted of manslaughter.

93. I have read a draft of the judgment of the President. My position on the sentencing guidelines in **Larry Raymond Jones** for persons convicted of manslaughter does not align with the views expressed by the President on this subject in that judgment. Therefore, I will set out in this judgment my thoughts on this point. Apart from this issue, for the reasons stated below, I agree that this appeal should be dismissed.

Background

94. The brief facts of this case are that on 6 November 2007 at around 6:00 a.m. the respondent was at the home of the deceased, Theophilus McKenzie. There were other persons there at the time. After an argument over buying cocaine rocks, which deteriorated into a physical altercation, the respondent killed Mr. McKenzie with a screw driver by stabbing him five times in different parts of his body. The respondent, who at the time was thirty one (31) years old, was under the influence of alcohol and/or drugs when he killed the deceased.

95. The respondent was charged with murder and it was not until December 2017, just over ten years after the deceased was killed, that the case went to trial. At the trial, the respondent pleaded not guilty and stated that the deceased instigated the physical altercation which led to his death. The respondent asserted that he was defending himself when he stabbed the deceased. The jury found him not guilty of murder but convicted him of manslaughter.

96. The judge gave a reasoned ruling before sentencing the respondent:

> **"…to seven years imprisonment to take effect from the 11th of December, 2017. In essence, it would mean that if you are to be of good behavior during that period of time, you will receive one third off and therefore you will serve, at that stage, approximately about four years."**

97. The Attorney General has appealed the sentence under section 12(3) of the Court of Appeal Act on the ground that it is unduly lenient and that there are no strong mitigating factors or other circumstances making the respondent deserving of such a degree of leniency.

98. The President has set out in his judgment the full text of the trial judge's sentencing ruling and there is no utility in reproducing it here.

General Sentencing Principles

99. The general principles governing this appeal are settled. In the case of **The Attorney-General v. Frederick Derrick Francis** SCCrApp. No. 2 of 2007 this Court (differently constituted) considered an application for leave to appeal by the Attorney General – which was treated as the hearing of the substantive appeal – against two sentences of life imprisonment on the conviction of two counts of murder on the ground that they were unduly lenient. In rejecting that ground, the Court followed the principles laid down in the English case of **Attorney General's Reference No. 4 of 1989** reported at (1990) 11 Cr. App. R. 366. Lord Lane, C.J. expressed those principles in these terms:

> **"26. The first thing to be observed is that it is implicit in [section 36(1) of the English Criminal Justice Act, 1988 which is in '*pari materia*' to section 12(3) of the Court of Appeal Act] that this Court may only increase sentences which it concludes were unduly lenient. It cannot, we are confident, have been the intention of Parliament to subject defendants to the risk of having their sentences increased - with all the anxiety that that naturally gives rise to - merely because in the opinion of this Court the sentence was less than this Court would have imposed. [See R v Gumbs (1927) 19 Cr. App. R below] A sentence is unduly lenient, we would hold, where it falls outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate. In that connection regard must be had to reported cases, and in particular to the guidance given by this Court from time to time in the so-called guideline cases. However it must always be remembered that sentencing is an art rather than a science; that the trial judge is particularly well placed to assess the weight to be given to various competing considerations; and that leniency is not in itself a vice. That mercy should season justice is a proposition as soundly based in law as it is in literature." [Emphasis added]**

100. Several years later, this Court, once again, had to consider an appeal against a sentence by a trial judge. In **Raphael Neymour v The Attorney General** SCCrApp. No. 172 of 2010 the appellant had been convicted of manslaughter and was sentenced to a term of five years imprisonment. The facts, succinctly put, were that the appellant went to a night club on West Bay Street and attempted to open the gate to gain entrance to the club. He was confronted by security officers and after a short exchange of words, the appellant shot one of them in the abdomen resulting in his death. The appellant appealed the conviction and the Attorney General appealed the sentence as being unduly lenient. The Court dismissed the appeal against the conviction and allowed the appeal relating to the sentence. In doing so, the sentence was varied from five years to twenty years.

101. In giving the decision of the Court, John JA cited with approval the above extract from the judgment of Lord Lane, C.J. in **Attorney General's Reference No. 4 of 1989** and then referred to the judgment in the English case of **A.G.'s Reference No. 20**; the case of **Stephen Ronald Roast** (1992) 13 Cr App. R. (S) 377 and specifically referenced this part of the judgment of Lord Lane C.J. in that case:

> **"We, as the words of the Act indicate, have discretion in this matter. We first of all have to decide whether the sentence was too lenient. We then have to decide whether it was unduly lenient. Even in those circumstances we still have a discretion as to whether we should order the sentence to be increased or not.**
>
> **Our view in this case is that this sentence was too lenient. We do not however think that it fell so far below what might properly be imposed by way of sentence as to justify our interfering with the sentence so as to increase it. We mention in that connection this fact, that we have said frequently, if not on every occasion when these cases have come before us on the Attorney General's reference, that one of the features which we take into account is the fact that this is, so to speak, the second occasion when the offender has had to be worried, and worried no doubt he is as to the length of sentence which is to be imposed upon him: first of all at the trial and then again before this Court on the Attorney General's reference." [Emphasis added]**

102. In the case of **R v Gumbs** (1927) 19 Cr. App. R. 74 the following statement of Lord Hewart, LC has been passed down through the authorities and continues to apply today:

> **"…this Court never interferes with the discretion of the Court below merely on the ground that this Court might have passed a somewhat different sentence: for this Court to revise a sentence there must be some error in principle."**

103. I bear in mind all these principles from the authorities in considering whether the sentence of seven years imprisonment imposed on the respondent in this case was unduly lenient.

Larry Raymond Jones Judgment

104. Both counsel in this case accepted that **Larry Raymond Jones** provides sentencing guidelines for persons convicted of manslaughter. Crown counsel deployed that case to support his contention that the trial judge erred in sentencing the respondent to seven years imprisonment for the offence of manslaughter which is significantly under the low end of

the range. He submitted that the judge did not identify any exceptional circumstances sufficient to justify the departure from the guidelines in **Larry Raymond Jones**.

105. For his part, counsel for the respondent acknowledged the guidelines and submitted that this was a proper case for the sentencing judge to exercise her discretion to deviate from **Larry Raymond Jones** and impose the shorter sentence of seven years imprisonment.

106. Let us consider the proper role of the **Larry Raymond Jones** judgment in the sentencing process of persons convicted of manslaughter before a trial court. In doing so, it is a counsel of caution to have regard to the earlier decisions of this Court where it has accepted that the **Larry Raymond Jones** judgment provided guidance for sentencing persons convicted of manslaughter. For present purposes, I need only cite three of those cases which, in my view, are representative of the approach which this court has adopted on this subject.

107. In **Andy Francis v R** SCCrApp. No. 133 of 2009 this Court (differently constituted) did not vary the sentence of twenty five years when substituting a conviction of manslaughter for murder, stating that it was **"….within the midrange of the sentencing scale for manslaughter and appropriate in all the circumstances."** This seems to be a reference to the sentencing guidelines for manslaughter of 18 – 35 years in **Larry Raymond Jones**.

108. This court specifically recognized the sentencing guidelines for manslaughter in **Larry Raymond Jones** in **Denie Osias v Regina** SCCrApp & CAIS No. 309 of 2014 where, giving the decision of the court, Allen P. stated:

> **"We are mindful of the range of sentences suggested by this court in Larry Raymond Jones for manslaughter, namely 18 to 35 years, which range has been applied and continues to be applied in determining the appropriate sentence in manslaughter cases."**

109. In **Mikiko Black v R** SCCrApp. No. 40 of 2014 this Court addressed the issue of the sentencing guidelines for manslaughter in **Larry Raymond Jones** in this way:

> **"79. The Court differently constituted considered the appropriate sentence for persons convicted of manslaughter in The Attorney-General v Larry Raymond Jones SCCrApp Nos. 12, 18 and 19 of 2007. The Court noted that a range of sentences of between eighteen to thirty-five years which had been imposed on various appellants had been upheld by the Court, "bearing in mind the character of the convicted person, the circumstances in which the offence was committed and whether the convicted person showed any remorse for the killing.**

> **80. I am mindful that there may be cases where a sentencing judge goes below or above the range suggested in Jones' case but it would be expected that cogent reasons for so doing would be provided by the judge…."**

110. In those paragraphs of the judgment in **Mikiko Black**, this Court expressly recognized (i) that the Court in **Larry Raymond Jones** considered the appropriate sentence for persons convicted of manslaughter; (ii) the sentencing range of 18 – 35 years of imprisonment for manslaughter set out in **Larry Raymond Jones**; (iii) that there may be cases where the sentencing judge "goes below or above" that range; and (iv) that "cogent reasons" should be given by the sentencing judge when departing from that range. This accords with my understanding of **Larry Raymond Jones** as a 'guideline case' emanating from the Court of Appeal.

111. In a general context, it is important to recognize that since the judgment was given in **Larry Raymond Jones** almost twelve years ago, it has been accepted in this jurisdiction, and specifically by this Court, as one of the 'guideline cases' on sentencing persons convicted of murder (where the death penalty is not appropriate) or manslaughter. Indeed, the trial judge in this case recognized this fact with regard to manslaughter in the following extract from her sentencing ruling:

> **"What are the sentencing guidelines? The maximum penalty for manslaughter is in accordance with Section 293 of the Penal Code is life imprisonment. However, the case of Larry Raymond Jones, Supreme Court number 12, 18 and 19 of 2017 has outlined the guidelines in respect of persons convicted of manslaughter. Sentences range from 18 to 35 years imprisonment."**

112. With that background, I turn to the facts of the cases before the court in **Larry Raymond Jones** which are well known.

113. Larry Raymond Jones, Patrick Alexis Jervis and Chad Goodman were each convicted of murder and sentenced to death. In the cases of Larry Raymond Jones and Patrick Alexis Jervis, the death penalty was later commuted to one of life imprisonment. Jervis and Goodman were also convicted of certain other offences and each of them was sentenced to terms of imprisonment for those offences. The respective appeals did not challenge those convictions and sentences and nothing further need be said about them.

114. While the three respondents were serving their sentences, the Privy Council delivered its judgment in **Forrester Bowe and Trono Davis v The Queen** [2006] UKPC 10 in which their Lordships held that the mandatory sentence of death was unconstitutional. As a result of that decision, all persons who had previously been sentenced under the mandatory death penalty had to be re-sentenced, including those whose sentences had been commuted to life imprisonment. On this basis, each of Larry Raymond Jones, Chad Goodman and Patrick Jervis attended the court for re-sentencing. In the case of Jones, who had been

incarcerated for approximately twenty years, the judge sentenced him to "time served" and he was released from prison. Jervis was sentenced to a further term of 3 years imprisonment commencing on 31 July 2007 and Goodman to 20 years imprisonment starting on that date. The Crown appealed the sentences as being unduly lenient and additionally contended, with regard to Jones, that the sentence of 'time served' was not known to law.

115. Dealing with Jones, the Court, speaking through the President, stated:

> **"37. In our judgment, while the learned judge's decision is not based on statute or common law, and must therefore be set aside, it does not necessarily follow that this court, even if we were minded to do so, could now pass another sentence as Jones is no longer in custody and there is no express statutory provision which would enable this court to return him to prison as he was not sentenced in accordance with section 186(1) of the CPC. In addition Jones has now been at liberty for over a year.**
>
> **38. All we can now do, in order to rectify the record, is to quash the sentence of "time served" and substitute therefore a sentence of thirty years beginning on the 17 March, 1988 the date of his conviction to reflect the intention of the sentencing judge: the Prison's record should also be amended to reflect that fact."**

116. Turning to Jervis, the Court set aside the sentence imposed by the re-sentencing judge and sentenced him to **"…30 years' imprisonment with effect from 2 March, 1989."** With regard to Goodman, the Court quashed the sentence of 20 years' imprisonment and imposed a sentence 50 years imprisonment starting on 20 November 1996.

117. In the course of the judgment, the President observed that:

> **"15. On the other hand, it must be noted that over the past 7 years, this court has set guidelines in respect of persons convicted of manslaughter. Sentences passed or upheld by this court during that period range from 18 years to 35 years imprisonment, bearing in mind the character of the convicted person, the circumstances in which the offence was committed and whether the convicted person showed any remorse for the killing (e.g., by pleading guilty at the earliest opportunity) to name some of the usual considerations to be taken into account by the sentencing judge."**

118. The President then stated:

> **"17. In our judgment, where, for one reason or another, a sentencing judge is called upon to sentence a person convicted of a depraved/heinous crime of murder and the death penalty is considered inappropriate or not open to the sentencing judge and where none of the partial excuses or other relevant factors are considered weighty enough to call for any great degree of mercy, then the range of sentences of imprisonment should be from thirty years to 60 years, bearing in mind whether the convicted person is considered to be a danger to the public or not, the likelihood of the convict being reformed as well as his mental condition. Such a range of sentences would maintain the proportionality of the sentences for murder when compared with sentences for manslaughter."**

119. The appeals in **Larry Raymond Jones** clearly related to the sentencing – or re-sentencing – of persons convicted of murder. However, it is equally clear that in providing sentencing guidelines in respect of that offence, the Court had in mind (i) the sentencing range for the offence of manslaughter which had been set by the Court of Appeal during the past seven years – see **Mikiko Black**; and (ii) the need to maintain a level of proportionality between sentences for the two offences. In this sense, the sentencing guidelines for murder ranging between 30 to 60 years imprisonment in paragraph 17 of the judgment correlates to and is partially reflective of the range of sentences for manslaughter in paragraph 15.

120. In **Larry Raymond Jones** the Court expressly states **"…that over the past 7 years, this court has set guidelines in respect of persons convicted of manslaughter."** The very next sentence in the judgment refers to the **"…range from 18 years to 35 years imprisonment bearing in mind…the usual considerations to be taken into account by the sentencing judge."** It is clear to me that the Court was stating (or at the very least, recognizing) that, based on the cases over the past seven years, a useful guideline for sentencing persons convicted of manslaughter is a period of imprisonment between 18 – 35 years. The fact that the judgment does not specifically cite the cases over the past seven years or that during that period there were cases where lower sentences were imposed does not undermine the efficacy of the guideline. As was said by the Court of Appeal of Northern Ireland in **Murdock v R** [2003] NICA 21:

> **"13 (d) Guidelines are of use in maintaining a degree of consistency in sentencing, but they are not to be slavishly followed, since the sentence in any given case has to determine what is appropriate for the individual case before the court..."**

121. It is helpful to read paragraphs 14 – 17 of the judgment in context. The final sentence of paragraph 14 states:

> **"14. On the one hand…there are no statutory guidelines to which a judge may turn for assistance in arriving at an appropriate tariff for a particular person convicted of murder in a particular case."**

Then, in paragraph 15 the Court observes that:

> **"15. On the other hand, it must be noted that over the past 7 years, this court has set guidelines in respect of persons convicted of manslaughter."**

122. Having established those predicates, the Court proceeded in paragraph 17 to provide the sentencing guidelines for persons convicted of murder where the death penalty is not appropriate. This progression indicates to me that the sentencing guidelines for murder were given in the context of the guidelines set for manslaughter. This view is consistent with the statement of the President in the **Larry Raymond Jones** judgment in paragraph 17 that the range of 30 –60 years' imprisonment for murder when the death penalty is inappropriate **"…would maintain the proportionality of the sentences for murder when compared with sentences for manslaughter."**

123. For these reasons, it seems to me that the Court in **Larry Raymond Jones** was setting sentencing guidelines for murder and manslaughter. Both guidelines have the same force and are there to assist trial judges when sentencing persons convicted of murder (where the death penalty is not appropriate) or manslaughter. As noted at paragraph 24 of **Attorney General's Reference No. 16 of 1992** (1993) 14 Cr App R (S) 13 neither are to be **"rigidly and unvaryingly followed"** to the point of displacing the discretion of the sentencing judge.

124. The fact that there have been cases in The Bahamas where the court has imposed sentences on persons convicted of manslaughter that were less than 18 years does not, in any way, undermine the potency or judicial standing of the guidelines for this offence under **Larry Raymond Jones**. Indeed, lower or higher sentences in specific cases are entirely compatible with the operation of the guidelines where, in exceptional or extenuating circumstances, the sentencing judge **"…concludes that their application would not result in the appropriate sentence"** (see paragraph 135 under) and **"cogent reasons"** are given for doing so.

125. The guidelines in **Larry Raymond Jones** provide assistance to a judge in arriving at an appropriate tariff for a particular accused person convicted of either murder or manslaughter in a particular case. Further, when properly applied, the guidelines seamlessly co-exist with the discretion of the sentencing judge in order to achieve the ultimate objective of justice in criminal cases.

126. Since the judgment was delivered in **Larry Raymond Jones,** the courts have recognized that, as in the case of all sentencing guidelines, the range for manslaughter and murder respectively in that judgment is, in each instance, the baseline and a sentencing judge can

impose a higher or lower sentence provided that cogent reasons are given for doing so. In this way the purpose and objective of the sentencing guidelines are achieved while preserving the discretion of the sentencing judge.

127. I see no reason to regress on this issue by casting doubt on the previous decisions of this Court relating to the sentencing range for manslaughter in **Larry Raymond Jones** or to call into question the long standing and widely held view of the judicial efficacy of that range in manslaughter cases. Even more so, there is, in my view, no proper basis to hold that the judgment in **Larry Raymond Jones** does not set out sentencing guidelines for the offence of manslaughter. The guidelines can be updated and expanded from time to time in the appropriate way, but to now hold in this case that **Larry Raymond Jones** does not set out, and was never intended to provide, sentencing guidelines for manslaughter in this jurisdiction is to overturn venerable authority (including earlier decisions of this Court) which has been accepted by this Court for the past eleven plus years. The Court should only do so after the most careful and mature deliberation assisted by full submissions from counsel on this point.

128. Also, it is necessary to bear in mind the principle enunciated in **Young v Bristol Aeroplane Co. Ltd.** [1944] KB 718 that the Court of Appeal is bound to follow its own decisions subject to the limited and well established exceptions set out in the judgment of Lord Greene MR in that case. The point here is not whether that principle operates to prevent or limit this court from affirming a sentence of imprisonment for manslaughter outside the guidelines in **Larry Raymond Jones** (i.e. between 18 – 35 years). That would be unarguable as the guidelines themselves are not to be mechanically followed as a matter of rote. It is clear that reasonable variances are permissible where exceptional circumstances or cogent reasons are given by the sentencing judge. Rather, the issue is whether, under **Young v Bristol**, this Court, as presently constituted, can now properly decline to follow the numerous earlier decisions by differently constituted panels of this Court holding that **Larry Raymond Jones** did, in fact, provide sentencing guidelines for the offence of manslaughter. Respectfully, it is not helpful to conflate this point with arguments relating to the discretionary nature of sentencing which is a settled principle and not challenged in this case.

129. In this regard, it must be noted that the authoritative efficacy or judicial currency of the sentencing range for manslaughter set out in the judgment of **Larry Raymond Jones** was not addressed by counsel or raised by the Court during the hearing of this appeal. As evidenced by the transcript of the hearing, the issue simply did not arise as the parties accepted the position expressed by the judge in her sentencing Ruling when she stated that "…..**the case of Larry Raymond Jones….has outlined the guidelines in respect of persons convicted of manslaughter. Sentences range from 18 to 35 years imprisonment."** The difference between the Crown and the Defence in this appeal centered primarily on whether there were sufficient reasons and/or exceptional circumstances in this particular case to depart from that range. Accordingly, the Court has not had the benefit of any submissions from counsel on the point of overturning previous authority on **Larry Raymond Jones**.

130. For the reasons stated in the President's judgment (which are supported by Crane Scott JA) and later in this judgment, we have concluded that the reasons and explanation given by the judge in her sentencing Ruling justified her departure from the range in **Larry Raymond Jones** and, on the facts of this case, the sentence was not unduly lenient. This disposes of the appeal and, therefore it is not necessary to venture into the consideration of an issue which was not raised by either party and was not addressed at any point during the appeal. In this regard, it is instructive to review the transcript of the hearing to see the basis on which the matter proceeded and the exchanges between counsel and the members of the Court on the case of **Larry Raymond Jones**. In my view, it is best to reserve any further consideration of the authoritative effect of the sentencing range for manslaughter in **Larry Raymond Jones** until there is a case before the Court where that issue is front and centre and fully argued by counsel.

Effect of Sentencing Guidelines

131. The jurisprudence on sentencing guidelines in criminal cases is well developed in the line of authorities dealing with this subject. It has never been the case that such guidelines have the force of statute or operate to prevent a sentencing judge, in certain circumstances, from exercising a discretion to impose a term of imprisonment less than the low end of the range set out in the guidelines.

132. In **The Attorney General v Kevin Smith** SCCrApp. No. 261 of 2012 this Court was considering an appeal by the Crown of a sentence of 18 years imprisonment imposed on the respondent by the trial judge following his conviction of the offence of murder. Smith had killed the deceased by stabbing him in the head with a screw driver after an argument over selling a tyre. Writing for the full Court, Isaacs, JA made the following instructive observations when addressing the approach to the sentencing guidelines set out in the Judgment in **Larry Raymond Jones** and specifically paragraph 17:

> **"20. While this passage is generally cited for the range of sentences mentioned, namely, thirty to sixty years, recourse to this range is conditioned by the phrase "depraved/heinous crime of murder". Also to be taken into consideration by the sentencing judge are such factors as:**
>
> > **i) whether or not the convict continues to be a danger to the public;**
> >
> > **ii) the likelihood of rehabilitation; and**
> >
> > **iii) the convict's mental condition.**
>
> **21. Offsetting the severity of the sentence and acting as a counterbalance would be the presence of a partial excuse or other relevant factor which may call for a great degree of mercy. <u>Circumstances may exist then to enable a</u>**

sentencing judge to go below the range suggested by the President. However, the presence of exceptional circumstances and/or factors must be disclosed on the record by the sentencing judge so as to justify the reduced sentence. Thus, if the sentencing judge was to stray below the recommended range, the decision for doing so must be demonstrably explicable." [Emphasis added]

133. The case of **Attorney General v Quincy Todd** SCCrApp. No. 56 of 2010 involved an appeal by the Attorney General of the sentence imposed on the respondent following a re-sentencing hearing. The respondent had been convicted of murder. In dismissing the appeal the Court provided this guidance:

> **"44. Sentencing is a judicial function and by far the most important function a trial judge has to perform. In the absence of statutory limitations, the judge has a wide discretion. That discretion must, however, always be exercised in a judicious manner, that is to say, the judge is duty bound to take several matters into consideration. It has been said that he must take into consideration the aggravating as well as the mitigating factors. Consideration must be given to the nature of the crime and the manner in which it was perpetrated. At the end of the day the judge using his judicial experience, taking into consideration the relevant case law and guidance given in earlier cases is left to determine what is fair and reasonable bearing in mind that no two cases are alike. It is a delicate balancing act."**

134. Further guidance was given by Evans, JA in **Caryn Moss v The Director of Public Prosecutions** SCCrApp. No. 230 of 2018 when writing for the Court he stated:

> **"85. …It is accepted that a trial judge in sentencing a convict has a discretion to determine the appropriate sentence in each case. However, like all discretions vested in judicial officers that discretion must be exercised judicially. In that connection the trial judge must have regard to reported cases, and in particular to the guidance given by this Court from time to time in the so-called guideline cases.**
>
> **86. The law gives a convict who has been sentenced the right to appeal his sentence and now also affords the Crown the ability to do the same. In approaching matters of this nature we are always mindful of the principle that an appellate court should be slow to interfere with the**

> **exercise of the trial judge's discretion and should not interfere unless some error in principle has been disclosed…"**

135. Evans, JA continued:

> **"87. Bearing the foregoing in mind it must necessarily be an error in principle for a trial judge to acknowledge guidelines that have been set by this court then proceed without adhering to them…This Court in setting the guideline of a sentence of 30 to 60 years for murder and related offences such as conspiracy to commit murder where the offence of murder has resulted has always acknowledged that it is only a guideline and not law. This Court in the case of Attorney General v Kevin Smith (supra) made it clear that where there are extenuating circumstances a sentencing judge could go below the established range. The circumstances which justified that change however must be documented.**
>
> **88. …The fact that a trial judge has inherent jurisdiction does not justify ignoring guidelines issued by this court.**
>
> **89. As a court we do not make laws but we do have a responsibility to provide guidance to lower courts. This ensures that there is some uniformity of approach by sentencing judges and allows litigants before the court to have some appreciation as to what to expect on being sentenced. We appreciate that some judges may not be in agreement with some guidelines issued. However, the responsibility of a judge is not to agree with guidelines issued by this court but rather to follow them."**

136. The judgment of the Caribbean Court of Justice in the case of **Burton v R, Nurse v R** (2014) 84 WIR 84 is most instructive. That judgment ably and clearly addressed the interplay between the role of sentencing guidelines and the discretion of the sentencing judge which **"…is at the heart of the sentencing process."** In part it reads:

> **"[15] But this is much different from saying that the guidelines lack legal significance or may be disregarded without reason. The guidelines distil important aspects of sentencing principles. When pronounced by the Court of Appeal they constitute rules of practice. Lower courts must have regard to the guidelines. The sacrosanct nature of the discretion of the sentencing judge is preserved in two ways. Firstly, the guidelines indicate a range of**

> **sentences that may be appropriate for particular categories of offences and it is for the sentencing judge to decide where on the continuum of the tariff the specific sentence ought to be placed having regard to the peculiarities of the circumstances of the offence and the offender. Secondly, it is perfectly appropriate for the sentencing judge to not follow the guidelines in a particular case if he or she concludes that their application would not result in the appropriate sentence. Public confidence in the criminal justice system must be maintained by the imposition of suitable penalties taking into consideration the penological objectives of protection of the public, deterrence, and rehabilitation of the offender, and it is for the sentencing judge in his discretion to make the call as to the sentence that will come closest to achieving those objectives. However, if the sentencing judge decides to depart from the guidelines established by the superior court then he or she should explain his or her reasons for doing so."**

Use of authorities in considering whether a sentence is unduly lenient

137. In considering whether a sentence is unduly lenient in a particular case, the Court will review other cases involving sentences imposed on persons convicted of the same offence. This reflects the reality that sentencing is not to be carried out in a vacuum although, as was stated in **The Attorney General v Kevin Smith "….a sentence must always reflect the circumstances of the offence and the circumstances of the offender."**

138. I do not regard cases where the sentence was not the subject of the appeal as helpful or even relevant to an appeal such as this one which directly challenges the sentence as being unduly lenient. In this regard, I agree with John, JA when he said in **Raphael Neymour** that the Court did not derive any assistance from the decision in **Tenelle Gullivan v R** No. 5 of 2005 as **"….the appellant did not appeal the sentence neither did the Attorney General challenge the sentence."**

139. There are any number of reasons why, in a particular case, the Crown may decide not to challenge the sentence imposed on a convicted person. Administrative issues and allocation of resources are just two of a myriad of considerations that might factor into that decision. In any event, the decision of the Crown in a given case as to whether to appeal a sentence is not dispositive of any relevant issue in a subsequent case. This point was made by Evans, JA in paragraph 39 of his judgment in **The Attorney General v Vilner Desir and Delano Taylor** SCCrApp No. 45 of 2015 when he said:

> **"39. [Counsel] had, as stated earlier, provided us with three cases where sentences similar to that received by the respondents herein were imposed. Firstly, as noted by [counsel], those cases were not appealed and were not**

> **reviewed by this Court. The fact that the Crown chose not to appeal those decisions was not, in our view, a bar to them opposing the sentence in the present case. It is trite law that in approaching the imposition or a review of sentence each case must be considered on its particular merits…"**

140. A decision by the Crown that it will not appeal a sentence in a given case whether or not the conviction is under appeal should not be attributed to the Court. In such a case, the sentence is not a live issue and therefore one would not expect the Court to engage in a review of the sentence. In those circumstances, the disposition of the appeal without comment on the sentence by the Court should not be viewed as an affirmation of the sentence by the Court. Simple logic alone would seem to support this position.

141. In his judgment in this appeal, the President cites a number of cases to show that this Court has not interfered with sentences of less than 18 years' imprisonment (i.e. the low end of the range in the guidelines in **Larry Raymond Jones** for manslaughter) for persons convicted of manslaughter. Those cases included **Tenelle Gullivan**, **Crisnell Desir** Criminal No. 688 of 2009, **R v Fanel Joseph** Criminal No. 43/2/2012, **Andrew Knowles v Regina** SCCrApp No. 73 of 2015 and **Aubrey Darling v R** SCCrApp. No. 155 of 2017. It should be noted that in each of those cases the sentence imposed on the person convicted of manslaughter was not the subject of the appeal. Therefore the sentence was not under review by the Court of Appeal. For that reason, and in line with **Raphael Neymour** and my views expressed above, I do not derive any assistance from those cases.

142. Two additional cases cited by the President are **Mikko Black v R** and **Donnell Rolle v R** [2011] 3 BHS J No. 25. In both of those cases the sentence was appealed by the convict as being unduly harsh but there was no appeal by the Crown on the ground that the sentences were unduly lenient. Accordingly, in considering those cases it must be borne in mind that the issue in the instant appeal was not before the Court in either of those two cases.

143. Recourse to cases in other jurisdictions when considering an appeal of a sentence is undoubtedly helpful but must be viewed through the prism of local conditions and in recognition of the milieu in the Bahamas. I agree with John, JA in **Raphael Neymour** when he observed:

> **"42. …Whilst we accept the general approach adopted by the English Court of Appeal in the case of Suratan and Ors (Supra), the court is very mindful of the fact that The Bahamas is culturally different from England and we must therefore be cautious not to slavishly following the courts of England on sentencing issues. The courts have a duty to send a strong message to the community at large and particularly to those involved in disruptive behaviour that as society advances a higher measure of self control is called for…"**

144. The same can be said of other countries and even though jurisdictions in the Caribbean have certain common experiences, there is no true homogeneity between peoples of different countries and prevailing social and cultural circumstances at any point in time are not the same in all jurisdictions. Therefore, while it is important to resist insular thinking on sentencing practices, the following statement of Evans, JA in **Vilner Desir and Delano Taylor** should be borne in mind:

> **"39. Decisions from other courts could be a guide but cannot be followed slavishly and in any event we must obviously give more weight to those decisions emanating from this court."**

Judge's Sentence

145. The only witness who gave evidence at the sentencing hearing was Ms. Kaylisa Simmons, the Senior Probation Officer at the Department of Rehabilitative and Welfare Services. She prepared the probation report in respect of the respondent. The report was put into evidence and was considered by the judge. According to the report, the respondent was 41 years old when he was sentenced. He was married with a family and was gainfully employed prior to his arrest and subsequent thereto while on bail pending trial. The judge stated in her Ruling that the **"…convict was obviously a person of good character prior to his convictions with no antecedents or prior convictions or pending matters. He had no prior convictions but struggled with alcohol and substance abuse" –** see page 323 lines 28 – 31 of the 11 May 2018 transcript. On general principles, the judge said:

> **"As part of its deliberations, the court had to give consideration to what is indeed the purpose of sentencing. The court, during its deliberation, was indeed cognizant of that well established principle that sentencing always must be proportionate to the gravity of the offence and promote a sense of responsibility to the offender for the offence committed.**
>
> **The object of sentencing is to promote respect for the law and maintain order, maintain a peaceful and safe society and discourage the act of crime with the imposition of sentences. Deeply rooted within this purpose are essentially the consent of the concept of deterrence, retribution, prevention and rehabilitation."**

146. In concluding her ruling, the judge stated:

> **""The court, therefore, having considered the probation report, the plea in mitigation by defence counsel, the submissions of the Crown counsel, the authorities of Larry Raymond Jones, Supreme Court appeal. The**

Attorney General v Kevin Smith, Supreme Court Appeal number 2611 of 2012, the Attorney General v Patrice McGregor number 43 of 2010, R v C., R v Prince Hepburn, Supreme Court number 79 of 2013, the certificate of convictions for Crisnell Desir, Criminal number 688 of 2009, the Crown v Fanel Joseph 432 of 2012. In which the first of those certificates there was a conviction for manslaughter by reason of [provocation] and a four year probation order was granted relative to the second certificate of Fanel Joseph.

The convict in that matter had pleaded guilty to manslaughter and had been given a ten years' probation. I also, as part of my deliberations, considered a case from the Eastern Caribbean from the Supreme Court in Dominica. The State v Clement Lavient Pierre 2012, which was somewhat similar in relation to this matter before the court. The original charge being that of murder which has been reduced to manslaughter.

And in that case given, the aggravating and mitigating factors, that convict therein had been sentenced to 12 years imprisonment.

The court also considered the mitigating and aggravating factors as it pertains in this case. The clean record of the convict. The circumstances under which the offence was committed and finally all of the matters touching and concerning the sentencing process together with the court being of the view that the convict, all things considered is a person who is capable of rehabilitation and can redeem himself and reformed subject to his submitting himself for treatment for substance abuse.

All of those factors taken into consideration and the court not forgetting that a life has indeed been lost, the life of Theophilus McKenzie, the court will, given all of the circumstances, hereby, deviate from the guidelines range of 18 to 35 years as outlined in the case of Larry Raymond Jones and will therefore exercise it's discretion to a lower range of seven years of imprisonment for Claude Lawson Gray to take effect from the day of conviction."

147. In my view, the learned judge was right to accept the sentencing guidelines in **Larry Raymond Jones** for persons convicted of manslaughter as the baseline. She was also right to accept that, in certain circumstances, a sentencing judge can deviate from those guidelines. The question is whether in her sentencing Ruling in this case the judge sufficiently explained her reasons and/or set out or identified exceptional circumstances to warrant such a significant departure from the sentencing guidelines for manslaughter in **Larry Raymond Jones**.

148. The Court stated in **Caryn Moss** that the circumstances which justified the deviation from the range **"…must be documented."** In **Kevin Smith** it was said that **"…the decision [to deviate] must be demonstrably explicable."** In **Mikiko Black** the Court expressed the same point by stating that it was expected that **"…cogent reasons.."** for deviating from the range would be provided by the judge. Again, in **Burton v R, Nurse v R** the Caribbean Court of Justice stated that **"…if the sentencing judge decides to depart from the guidelines established by the superior court then he or she should explain his or her reasons for doing so."**

149. I have carefully read the sentencing Ruling and given this matter anxious consideration. No doubt, the judge could have been more deliberate in following the directions in the cases cited in the preceding paragraph by expressing more directly the reasons for the significant variance between the sentence she imposed and the low end of the range in **Larry Raymond Jones.** Nonetheless, I am of the view that when read in its entirety in the context of all the information and material which was before the judge, her reasons for deviating from the range in **Larry Raymond Jones** in the particular circumstances of this case are adequately explained and set out in the sentencing Ruling. She referred to the mitigating factors pertaining to the antecedents of the convict including that he had no previous convictions, the circumstances of the offence and absence of any element of premeditation, the fact that he was under the influence of alcohol or drugs at the time of the offence and the nature of the weapon used in the attack. The judge stated in her Ruling:

> "**While on bail for [this] matter, [the respondent] successfully obtained employment as a painter/landscaper, construction worker and as a handyman at the One Ocean condominium."**

150. In referring to the mitigation plea on behalf of the convict, the judge noted in her sentencing Ruling the following submission of his counsel:

> **"[Counsel] further submitted for or on his behalf the convict for some 14 years was on bail, awaiting bail and at no time was in breach of any of the conditions of his bail or the law for that matter.**
>
> **He, during this time, built a life with a wife and family. He was gainfully employed and has shown by the way he lived that he intended on being a productive member of society…"**

151. It appears from the information available to the Court that the reference to 14 years may not be correct, although the respondent was on bail for at least 9 years before his trial started in the Supreme Court. The main point here is that the judge was aware of the long period between the dates when the respondent was charged and when his trial commenced and that while he was on bail he had not breached the conditions of his bail. It seems to

me that these matters were exceptional and relevant to the decision on the sentence to be imposed on the respondent after his conviction. It would have been helpful for the judge to elaborate on her view on these matters, but the record clearly establishes that she was aware of them when sentencing the respondent and that they were a part of what the judge refers to as "…**all of the matters touching and concerning the sentencing process**."

152. It is important to re-emphasize that when a sentencing judge has decided, as a matter of discretion, that the appropriate and just sentence in a given case requires a deviation from the guidelines in **Larry Raymond Jones,** he/she should clearly, specifically and expressly set out the reasons and exceptional or mitigating circumstances for doing so. There should be no doubt as to the matters which the judge relied on to justify departing from the guidelines. In the language employed in **Kevin Smith "…the decision [to deviate] must be demonstrably explicable."** In the event that the sentence is appealed, this Court would then be in a position to consider the cogency of the reasons and the nature and adequacy of the exceptional circumstances for the deviation in determining the appeal.

153. The judge also considered the aggravating factors. She recorded those factors, as submitted by counsel for the Crown, in these terms:

> **"Aggravating factors….as being the seriousness of the offence. The commission of the offence that weapon used was that of a screwdriver and the high level of crime particularly that of homicide. [The Crown] wanted the court to note that charge was one of murder which was reduced to manslaughter by the jury and that there was really no remorse shown by the convict for his actions."**

154. Later in the sentencing Ruling, the judge referred to the respondent showing remorse but he maintained his innocence of any criminal offence throughout the trial.

155. The aggravating factors in this case were not so egregious as to decisively outweigh the mitigating factors or preclude a degree of leniency in sentencing the respondent.

156. In my view, the sentence of seven years imprisonment in the circumstances of this case was lenient – but was it unduly lenient requiring this Court, at this stage, to quash it and replace it with a longer sentence? In answering this question I can do no better than to adopt, *mutatis mutandis*, the language of Lord Lane C.J in the English case of **A.G.'s Reference No. 20; Stephen Ronald Roast**. For convenience I set it out again:

> **"Our view in this case is that this sentence was too lenient. We do not however think that it fell so far below what might properly be imposed by way of sentence as to justify our interfering with the sentence so as to increase it. We mention in that connection this fact, that we have said frequently, if not on every occasion when these cases have come before us on the Attorney General's reference,**

> **that one of the features which we take into account is the fact that this is, so to speak, the second occasion when the offender has had to be worried, and worried no doubt he is as to the length of sentence which is to be imposed upon him: first of all at the trial and then again before this Court on the Attorney General's reference."**

157. In the case of **Attorney General's Reference No. 16 of 1992** a sentence of six months for buggery was under appeal. Lord Taylor LCJ considered "**whether public confidence in criminal justice could be maintained if the public were aware of the circumstances of this case and the sentence which was passed.**" In giving the decision for the court, he answered the question in the negative and held that the sentence was unduly lenient. In the instant case, I would answer that question in the affirmative. As I have indicated, I regard the sentence as lenient, but not to the degree where public confidence in criminal justice would be undermined if the public were aware of the circumstances of this case and the sentence imposed on the respondent.

The Disposition and Sentence

158. I have in mind the wide discretion of the sentencing judge and the particular advantage she had to assess the weight of the relevant considerations.

159. I am also cognizant of the principles enunciated in the above cited authorities relating to the approach of an appellate court when considering whether a sentence is unduly lenient. In summary they are:

> (i) the sentence must not only be too lenient but unduly lenient in the sense set out in **Attorney General's Reference No.4 of 1989**;
>
> (ii) even if it is unduly lenient, the court has a discretion as to whether to increase the sentence;
>
> (iii) if a decision is made to increase the sentence, the court must make allowance for the fact that the offender has to be sentenced a second time;
>
> (iv) the court should not interfere with the discretion of the court below in imposing the sentence merely on the ground that it might have given a different sentence; and
>
> (v) there must be an error in principle before the court will revise a sentence.

160. Bearing in mind all these factors, the particular circumstances of this case and the reasons given by the judge in her sentencing Ruling for deviating from the range in **Larry Raymond Jones**, I have concluded that the sentence of seven years imprisonment cannot

be said to fall outside the range of sentences which the judge, applying her mind to all the relevant factors, could reasonably consider appropriate. Therefore, I do not regard the sentence as unduly lenient.

161. However, even if I had concluded that the sentence in this case was unduly lenient, I would have exercised the Court's discretion to decline to interfere with it in the circumstances of this case.

162. The authorities are clear in holding that the appellate court has a discretion as to whether to exercise its powers to increase the sentence in the particular circumstances of a given case when it has determined that the sentence is unduly lenient. In **Attorney General's Reference No. 4 of 1989** Lord Lane C.J. expressed the point in this way:

> **"…even where it considers that the sentence was unduly lenient, this Court has a discretion as to whether to exercise its powers. <u>Without attempting an exhaustive definition of the circumstances in which this Court might refuse to increase an unduly lenient sentence</u> we mention one obvious instance; where in the light of events since the trial it appears either that the sentence can be justified or that to increase it would be unfair to the offender or detrimental to others for whose wellbeing the Court ought to be concerned." [Emphasis added]**

163. It bears repeating the following statement of Lord Lane C.J. in **A.G.'s Reference No. 20; Stephen Ronald Roast**:

> **"We, as the words of the Act indicate, have discretion in this matter. We first of all have to decide whether the sentence was too lenient. We then have to decide whether it was unduly lenient. Even in those circumstances we still have a discretion as to whether we should order the sentence to be increased or not."**

164. In **Kevin Smith** this Court stated:

> **"9. …So, even if an appellate court was to find a sentence was "unduly lenient" it may or may not interfere with it."**

165. Therefore, where the appellate court has decided that the sentence is unduly lenient, it must take the additional step of determining for itself whether it would be right, in the exercise of its discretion, to increase that sentence.

166. This case was unusual in that, as stated earlier in this judgment, a period of approximately ten (10) years elapsed between the respondent being charged and the start of the trial in the Supreme Court. He was remanded at H.M. Prison (as it was known at that time) for a part of that period and was released on bail for the balance of the time. The reason for the delay

is not clear from the record but the ten year waiting period for the trial to begin was an unusually long time which significantly stretched the disposition cycle for this case. The respondent lived with the extremely serious charge of murder hanging over his life during that period. By the time the judge came to sentence the respondent in May 2018, approximately ten and a half years had passed since the offence was committed in November 2007.

167. As of the current date, this matter has been proceeding for almost thirteen years (November 2007 – September 2020). The convict was first sentenced in May 2018, just over 2 years ago, and the appeal, which was filed shortly thereafter in May 2018, has been pending for the same period of time. In my view, given the history of this matter, it would have been be unfair to the convict to increase the sentence at this time.

168. Therefore, for the reasons stated herein, I dismiss the appeal.

The Honourable Sir Brian Moree, CJ

Judgment delivered by the Honourable Madam Justice Crane-Scott, JA:

169. I have read the draft judgments of my brothers Sir Michael Barnett, P and Sir Brian Moree, CJ, respectively, who each for completely different reasons agree that the Crown's appeal should be dismissed and the respondent's sentence of 7 years for manslaughter be affirmed. At the outset, I should state that I associate myself completely with the reasoning set out in Sir Michael's draft which accords with my views regarding the status of **The Attorney General v Larry Raymond Jones et. al.** SCCrApp. Nos. 12, 18 & 19 of 2007 as a sentencing "guideline" for manslaughter in this jurisdiction.

170. I wish, however, to add the following observations in support of the opinion which Sir Michael has expressed and the disposition he proposes of the appeal.

171. It is undisputed that in the approximately 12 years which have elapsed since **Larry Raymond Jones** was decided, attorneys-at-law, trial judges, and even successive panels of this Court have proceeded on the assumption that apart from establishing a 30 to 60 year sentencing guideline for *murder*, what this Court also did was to lay down a fixed sentencing "guideline" of 18 to 35 years for the offence of *manslaughter* which is not to be departed from by the judge except in exceptional circumstances.

172. By the time I joined the Court in 2015, the prevailing view of **Larry Raymond Jones** as a manslaughter "guideline" was well-entrenched both at the level of the Supreme Court as well as in the Court of Appeal. Indeed, is true to say that its status as a definitive sentencing "guideline" for manslaughter has never been seriously questioned before now.

173. At the trial-level, **Larry Raymond Jones** is consistently cited as the relevant "guideline judgment" to which regard must be had whenever a sentencing judge is considering the imposition of a custodial sentence for manslaughter. At the appellate level, the case is routinely referred to in the course of argument whenever the correctness of the sentence in manslaughter cases come up for review. Indeed, I was part of the panel in **Denie Osias v. Regina** [2017] BHS J. No. 75 where this Court (Allen P, Isaacs, Crane-Scott, JJA) sat to consider an appeal against a 25 year sentence for manslaughter on the ground that it was unduly severe. Speaking for the Court in dismissing Osias' appeal, Allen P., in a short oral judgment stated:

> **"We are mindful of the range of sentences <u>suggested</u> by this court in Larry Raymond Jones for manslaughter, namely, 18 to 35 years, which range has been applied in determining the appropriate sentence in manslaughter cases…"**

174. As far as I have been able to determine, this is perhaps the first time that the status of the 18 to 35 years sentencing range identified in paragraph 15 of **Larry Raymond Jones** as a definitive "guideline" for manslaughter offences has been called into question.

175. That paragraph reads as follows:

> **"15. On the other hand, it must be noted that <u>over the past 7 years, this court has set guidelines</u> in respect of persons convicted of manslaughter. Sentences passed or upheld by this court during that period range from 18 years to 35 years imprisonment, bearing in mind the character of the convicted person, the circumstances in which the offence was committed and whether the convicted person showed any remorse for the killing (e.g., by pleading guilty at the earliest opportunity) to name some of the usual considerations to be taken into account by the sentencing judge." [Emphasis added]**

176. Read by itself and in isolation from its context within the broader discussion in paragraphs 13 through 17 of **Larry Raymond Jones**, it is not difficult to see how paragraph 15 might be regarded by some as having established a firm sentencing "guideline" for manslaughter. However, as Sir Michael's judgment has now so convincingly explained, a close reading of paragraphs 13 through 17 strongly suggests that the Court was not purporting to establish a sentencing "guideline" for *manslaughter* at all. On the contrary, what the Court was instead seeking to do was to set out the necessary groundwork for establishing an appropriate "guideline" for the passing of determinate sentences for *murder* in cases where the death penalty is not appropriate.

177. As is clear from paragraph 15, the Court identified a range between 18 years at one end to 35 years imprisonment on the other which had emerged from an undisclosed number of

sentences "**passed or upheld"** at the appellate level which the Court said represented "guidelines" which the Court had previously *set* over the past 7 years in respect of persons convicted of manslaughter.

178. Having myself reviewed paragraph 15 in its proper place within paragraphs 13 through 17, I am satisfied that properly understood, the Court in **Larry Raymond Jones** was not reviewing manslaughter sentences but was instead reviewing a challenge by the Crown to three sentences imposed on the three respondents who had each been re-sentenced for *murder* in circumstances where the death penalty could no longer be imposed and which the Crown alleged to be unduly lenient.

179. At paragraphs 13, the Court in **Larry Raymond Jones** declared that the now discretionary death penalty should be reserved for the "worst" cases of *murder* and drew attention to the examples of cases categorized as the "worst of the worst" which it had previously given in **Maxo Tido v. Regina** SCCrApp No. 12 of 2006.

180. Turning next to consider what custodial sentences (if any) were available for *murder*, the Court noted that there were no statutory guidelines to which judges could turn for assistance in arriving at an appropriate sentence or tariff for persons convicted of *murder*.

181. At paragraph 15, the Court declared that in the past 7 years this Court had *set* "guidelines" for persons convicted of manslaughter. The Court then purported to identify what it said was an 18 to 35 year range of sentences for manslaughter which had been "passed or upheld" at the appellate level in the preceding 7 years.

182. At paragraph 16, the Court recognized the potential for overlap or intersection between determinate sentences passed for *manslaughter* and those passed for *murder* respectively, and expressly observed that some cases of manslaughter are as heinous as some murders.

183. Having identified what it considered the appropriate intersection or "dividing line" between determinate sentences for *murder* and the 18 to 35 year range set for *manslaughter* in the preceding 7 years, the Court proceeded at paragraph 17 to lay down, for the first time in this jurisdiction, a specific sentencing "guideline" for *murder*, being a definitive range of sentences (falling anywhere between 30 to 60 years) which it expressly stated was to be taken into account by the sentencing judge following a person's conviction for:

> **"…a depraved/heinous murder and the death penalty is considered inappropriate or not open to the sentencing judge and where none of the partial excuses or other relevant factors are considered weighty enough to call for any great degree of mercy".**

184. It is evident from the foregoing review that the primary focus of the Court in **Larry Raymond Jones** was to ensure that the range of determinate sentences for *murder* of 30 to 60 years which it established at paragraph 17, would be "proportionate" when compared with sentences imposed for manslaughter.

185. Understood in this way, it is very doubtful whether paragraph 15 of **Larry Raymond Jones** was ever intended to establish a comprehensive sentencing "guideline" for manslaughter offences. Indeed, the Court was adverting to the "guidelines" which had already been set in the preceding 7 years. I completely agree with Sir Michael who, at paragraph 21 (above) observed that there is no judgment of the Court prior to **Larry Raymond Jones** which purports to set guidelines for manslaughter. In my view, it is very likely that what the Court referred to as "guidelines" was a limited range of manslaughter sentences passed or upheld by this Court in appeals in the preceeding 7 year period.

186. Moreover, the accuracy as a "guideline" of the 18 to 35 year range is questionable inasmuch as no mention is made of sentences passed or upheld in the preceeding 7 years which fell well below the lower end of that range. See for example **Christine Johnson Alcock v R** Criminal Appeal No. 30 of 2001 and **Tenelle Gullivan v R** No. 5 of 2005 discussed in Sir Michael's draft, where sentences of 15 and 6 years respectively were "passed or upheld" in manslaughter appeals decided within the preceding 7 years.

187. Again, apart from identifying the 18 to 35 year range, the so-called "guideline" judgment in **Larry Raymond Jones** provides no guidance whatsoever in relation to where along the suggested sentencing continuum certain categories of manslaughter offences might lie. Curiously, manslaughter by negligence which carries a statutory maximum of 5 years is obviously outside the "guideline". What is more, the so-called "guideline" makes no attempt to differentiate between for example, unintentional homicides, manslaughter by diminished responsibility or by provocation; or the special provisions of section 299 of the Penal Code, Ch. 84 governing the categories of intentional homicides which have been reduced to manslaughter which one might expect to see at the upper end of a properly constructed "guideline". Having regard to these deficiencies, if guidelines were indeed *set* in the preceeding 7 years, it is hard to avoid the conclusion that they were not as comprehensive as they should have been and that the 18 to 35 year range is somewhat selectively drawn.

188. In any event, as Sir Michael has so cogently explained, even if the 18 to 35 year range in **Larry Raymond Jones** was intended to lay down a firm "guideline" for manslaughter, it is in effect no more than a guide and certainly does not rise to the level of a binding principle of law. Simply put, "guidelines" do not fetter the sentencing discretion of a Supreme Court judge, whose role alone it is to determine the appropriate sentence to be passed in individual cases, having applied his or her mind to all the relevant material, including reported cases, any relevant sentencing guidelines and other matters which could reasonably be considered appropriate in the circumstances.

189. It does not follow from the mere fact that a sentence falls below the suggested range identified in **Larry Raymond Jones**, that the sentence is *ipso facto* wrong in principle or is unduly lenient. Irrespective of whether the case is a guideline or not, the task of this Court is to determine whether the judge exercised her discretion reasonably and whether (as the Crown contends in this case) the sentence appealed from was wrong in principle; or was unduly lenient as the case may be.

190. If the sentence which was imposed is not patently unreasonable; and provided that the judge's Ruling clearly demonstrates that she has exercised her sentencing discretion reasonably and applied her mind to all the relevant matters (including reported cases and other "guidance") which could reasonably be considered appropriate, a Court of Appeal will not interfere.

191. In this case, the trial judge regarded **Larry Raymond Jones** as a sentencing "guideline" for manslaughter. She adverted to it and considered it along with the range of sentences disclosed in reported cases which were cited to her and then cogently demonstrated why, in this particular case, she had exercised her discretion as she did.

192. The numerous reported cases discussed in Sir Michael's draft amply demonstrate that the 7 year sentence which the learned judge imposed falls within the range of sentences which have been imposed in this jurisdiction for manslaughter.

193. A close reading of the judge's sentencing Ruling (extracted in Sir Michael's draft) confirms that the learned judge clearly and thoughtfully set out her reasons for departing from the range of manslaughter sentences in **Larry Raymond Jones** which she clearly regarded as a "guideline". The judge also had regard to defence counsel's submission that she make a probation order instead of imposing a custodial sentence. She considered, *inter alia,* the reported cases which had been laid over, including the case of **R v. Fanel Joseph** Criminal No. 43/2/2012 cited by Mrs. Farquharson (counsel in the court below), where a 10 year period of probation had been imposed in the Supreme Court following the defendant's manslaughter conviction.

194. Quite evidently the learned judge considered that a probation order would not meet the justice of this particular case and turned her attention to determining an appropriate custodial sentence which would meet the justice of the case. As her Ruling amply demonstrates, she proceeded to consider the probation report, the plea in mitigation together with relevant reported cases, and also had regard to the range of manslaughter sentences suggested in **Larry Raymond Jones**.

195. It is also obvious from her Ruling that the learned judge was well aware of the broad objects of sentencing and expressly referred to the well-known sentencing aims of deterrence, retribution, prevention and rehabilitation. After she had weighed the aggravating and mitigating factors of the offence as well as of the offender (as she found them) the learned judge considered the fact of the appellant's cocaine use to be a very strong mitigating factor weighing very heavily in his favour.

196. As her Ruling clearly shows, in the deliberate exercise of her exclusive sentencing discretion, the judge then settled upon a custodial sentence of 7 years which was clearly aimed more towards rehabilitation of the offender than to general deterrence, retribution or prevention. The learned judge was undoubtedly entitled to exercise her discretion in this manner having regard to the appellant's previous good character, Mrs. Farquharson's strong plea in mitigation and his very favourable probation report.

197. I agree with Sir Michael that while the 7 year sentence for manslaughter might appear lenient, it is not unduly lenient inasmuch as (despite the range set out in **Larry Raymond Jones**) it falls within the range of sentences which recorded cases show have previously been imposed in this jurisdiction (and elsewhere) for manslaughter. In short, the judge's discretion was exercised reasonably and disclosed no error of principle; and that the sentence she imposed was not unduly lenient. We should not interfere.

198. I fully recognize that the views expressed in Sir Michael's draft (with which I agree) will likely cast doubt on the prevailing view that **Larry Raymond Jones** is an authoritative sentencing "guideline" for manslaughter from which sentencing judges should not depart except in exceptional circumstances. However, as I have sought to demonstrate, paragraph 15 was never intended to lay down a comprehensive sentencing "guideline" for manslaughter. Even if it had been intended to lay down a sentencing "guideline", it could not fetter the sentencing discretion of the learned judge who was free to depart from it provided that she gave reasons for so doing.

199. Before closing, I would be remiss if I did not address the suggestion made by Sir Brian between paragraphs 104 through 129 of his judgment that stare decisis and the principle set out in **Young v Bristol Aeroplane Co. Ltd.** [1946] AC 163 constrains both Sir Michael and myself ("the majority") from expressing an opinion questioning the prevailing view that paragraph 15 of **Larry Raymond Jones** established a definitive sentencing "guideline" for manslaughter not to be departed from by the trial judge (or apparently by this Court) except for good reason. With respect, I am of the view that the reliance on **Young** is misplaced.

200. The principle in **Young**, as I understand it, is that this Court is bound by principles of law established by this Court and must apply principles of law established in earlier cases to subsequent cases with similar facts. However, guidelines as to a range of sentence are not principles of law. Indeed, given the discretionary nature of sentencing, a guideline as to a range of sentence could hardly be a principle of law.

201. Even if (which the majority does not accept) the 18 to 35 year range which the Court identified in **Larry Raymond Jones** was intended thenceforth to lay down a "guideline" for manslaughter, the nature of guidelines themselves recognize that judges are free to depart from them. Suffice it to say; **"a sentencing judge can depart from the guidelines if adherence would result in an unjust sentence."** See **Naitrim et al v The Queen** HCRAP Nos. 5, 6 and 8 of 2006.

202. As I see it, the fact that successive panels of this Court have without question acknowledged the 18 to 35 year range identified in **Larry Raymond Jones** as a "guideline" and have used it to review the appropriateness of sentences passed in numerous appeals since then, cannot make the 18 to 35 year range a binding principle of law never to be departed from. Nor, in my view, does the fact that 12 years have passed since the 18 to 35 range was first identified as a so-called "guideline", preclude the majority from questioning the basis on which the suggested range was arrived at in the first place. The

principle in **Young** is clearly inapplicable to this situation and in any event, cannot constrain the members of this Court from expressing opinions (as we have all done) regarding the status of **Larry Raymond Jones** as a "guideline" for manslaughter.

203. The time has perhaps come for The Bahamas to establish an appropriate mechanism (such as exits in other jurisdictions) which will be tasked with researching and developing comprehensive sentencing "guidelines" to be introduced in relation to specific categories of offences. Until then, the role of this Court on an appeal against sentence will remain (as it has always been) namely, that the Court will not lightly interfere with the exercise of a judge's sentencing discretion unless the discretion is shown to have been exercised unreasonably and the judge has failed to have regard to all the relevant factors (including reported cases and other "guidance") which could reasonably be considered appropriate. In this regard, see **Raphael Neymour v. Regina** SCCrApp No. 172 of 2010 applying the dictum of Lord Lane CJ in **Attorney General's Reference No. 4 of 1989** [1990] 11 Cr. App. R. 366.

204. For all the above reasons together with those more fully set out in Sir Michael's judgment, I too would dismiss this appeal.

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The Honourable Madam Justice Crane-Scott, JA