COMMONWEALTH OF THE BAHAMAS
IN THE COURT OF APPEAL
SCCrApp. No. 88 of 2007

B E T W E E N

ROGER WATSON

Appellant

AND

REX

Respondent

BEFORE: **The Honourable Sir Michael Barnett, P**
The Honourable Mr. Justice Evans, JA
The Honourable Mr. Justice Smith, JA

APPEARANCES: **Mr. David Cash, Counsel for the Appellant**

Mr. Uel Johnson, Counsel for the Respondent

DATE: **28 November 2023; 5 December 2023, 18, 22 January 2024**

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Criminal appeal – Resentencing – Remitted from the Judicial Committee of the Privy Council – Parity principle - What is the proper sentence to be imposed

The appellant was charged with murder following a shooting incident which occurred on 15 January 2003 and sentenced to death. On appeal the Court of Appeal, by majority, substituted a conviction for manslaughter, quashed the sentence of death and imposed a sentence of 50 years imprisonment. The appellant appealed to the Privy Council against the 50-year sentence. The Privy Council allowed the appeal and ordered the appellant to be resentenced by this Court.

Held: A sentence of 30 years imprisonment is appropriate. The sentence is reduced to have regard to the time the appellant spent on remand, the time spent waiting for a determination on whether the death penalty would be imposed, and the 21 years already spent in custody under sentence of death and a sentence of 50 years imprisonment. In all of these circumstances, a sentence of 26 years is imposed to run from the date of conviction.

The issue for this Court's consideration is what is the proper sentence to be imposed at this time.

The parity principle is an important factor in sentencing. Whilst a sentencing judge, in the exercise of his discretion, is not bound by sentences imposed in any other case, the parity principle informs

a judge that sentences should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

The factors the Court considered are as follows: the appellant indiscriminately fired into a home, using a high-powered firearm and the need to deter others. These factors were considered against the time the appellant spent on remand, the time the appellant spent in custody post-conviction and prior to sentencing and the anxiety of spending a year waiting for a determination of whether he would be sentenced to death. Further, the appellant has spent the past 21 years in custody under a sentence of death and thereafter under a sentence of 50 years imprisonment.

Andy Francis v R SCCrApp. No. 133 of 2009 distinguished
Ashley Hield v Regina SCCrApp. No. 172 of 2019 considered
Christopher McQueen v DPP SCCrApp. No. 18 of 2021 considered
Donnell Rolle v R [2011] 3 BHS J No 25 considered
Lorenzo Pritchard v R SCCrApp. No. 130 of 2020 considered
Marvin Edgecombe v DPP SCCrApp. No. 145 of 2021 considered
The Attorney General v Claude Lawson Gray SCCrApp. No. 115 of 2019 considered
The Attorney General v Larry Raymond Jones, Patrick Jervis, and Chad Goodman SCCrApp. Nos. 12, 18 & 19 of 2007 considered

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J U D G M E N T

Judgment delivered by The Honourable Sir Michael Barnett, P:

1. This is a resentencing which has been ordered by the Privy Council, following a successful appeal against sentence. The appellant had been sentenced to a term of 50 years imprisonment for a conviction of a single count of manslaughter. The Privy Council described the sentence as "draconian".

2. The appellant seeks a reduction of his sentence to a term of 25 years. The respondent urges that he be imprisoned for a term of 35 years. Both sentences, they concede, should run from the date of conviction. For the reasons set out in this judgment we will impose a sentence of 26 years from the date of his conviction.

3. The facts are set out in the advice of the Board dated 5 September 2023.

4. The appellant, Roger Watson, was charged with murder following a shooting that took place on 15 January 2003.

5. The prosecution's case was that at around 8:00 pm that evening, the appellant used a high-powered rifle to shoot a series of bullets into the house of a Mr. Pinder. It was a wooden structure where Mr. Pinder and another man, Mr. Munroe, often stayed. The shooting left ten bullet holes in the front partition wall. One of the bullets struck and killed Eddison Curtis-Johnson, Mr. Pinder's 12-year-old stepson, who was sitting in the living room at the time.

6. The evidence at the trial was that the appellant and Mr. Munroe had an altercation earlier that day.

7. Following a trial that took place in September 2006, the appellant was convicted of murder on 26 September 2006 and a year later, on 20 September 2007, sentenced to death.

8. In sentencing the appellant to death, the trial judge said:

> **"Having considered:**
>
> > **(i) that the victim was an innocent child;**
> >
> > **(ii) that a firearm was used in the commission of an offence;**
> >
> > **(iii) that the offence was as a result of an assault, I consider a 'home invasion'.**
> >
> > **(iv) that the convict deliberately and callously stood in front of, and fired into, the home, reckless as to whether anyone was at home at the time and not caring who was hit, an act of terrorism;**
> >
> > **(v) that there was no remorse shown by the convict;**
> >
> > **(vi) that there are no mitigating factors;**
> >
> > **(vii) that there was significant premeditation in that the convict;**
> >
> > > **(a) secured a high-powered rifle capable of penetrating the walls of the home and special bullets designed to kill and destroy;**
> > >
> > > **(b) outfitted himself in camouflage clothing in an attempt to disguise himself;**
> > >
> > > **(c) arranged to be dropped at the crime scene and picked up after the shooting;**
> > >
> > > **(d) chose 8:00pm on a weeknight, a time when children and parents were likely to be at home;**

I conclude this is a case, which fits in the upper range of the spectrum of criminal culpability for murder."

9. The judge imposed the death penalty.

10. The appellant then appealed his conviction and sentence to the Court of Appeal. On 25 June 2009, the Court of Appeal, by a majority decision, quashed the conviction for murder and substituted a conviction for manslaughter. The sentence of death was also quashed and the Court of Appeal, without hearing any submissions on the issue of sentence, imposed a sentence of 50 years from the date of conviction. The Court said:

"45. For the reasons given, we would allow the appeal, quash the conviction for murder, set aside the death penalty; and substitute therefor a conviction for manslaughter and impose a sentence of fifty years' imprisonment with effect from the date of conviction because in our judgment on the scale of manslaughter, this offence stands at the top end."

11. After an application for special leave, granted on 15 December 2021, the Privy Council, on 5 September 2023, allowed the appeal against the 50-year sentence. It ordered that the appellant be resentenced by this Court.

12. The Board in its advice referred to this Court's decision in **The Attorney General v Larry Raymond Jones, Patrick Jervis, and Chad Goodman** SCCrApp. Nos. 12, 18 & 19 of 2007, where this Court said:

"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. <u>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.</u>

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 or 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]

13. The Board, in allowing the appeal against the 50-year sentence for manslaughter, said at paragraph 40:

"40. In the present case the respondent says that the appellant could not have been left in any doubt as to the reasons for the sentence because the trial judge had given reasons for her sentence and the Court of Appeal had said that his offence was at the upper end of the spectrum of offences of manslaughter. However, following the quashing of the murder conviction, the resentencing in the present case was necessarily a substantially different exercise from the trial judge's sentencing for murder. As discussed above, the factual matrix, sentencing criteria and judicial guidance relied upon by the trial judge were very different from those which should have been considered by the Court of Appeal when sentencing for this offence of manslaughter. Furthermore, the judgment of the Court of Appeal, while indicating that this was a very serious case of manslaughter, gave no indication as to why it imposed a sentence some 15 years longer than the highest sentence for manslaughter in the cases surveyed in Larry Raymond Jones. In the Board's view, the failure of the Court of Appeal to give its reasons for the imposition of such a draconian sentence was a further denial of a fundamental procedural right."

14. It is against this background that this Court approaches the issue of resentencing.

15. The decision of this Court in **Larry Raymond Jones** was considered again in **The Attorney General v Claude Lawson Gray** SCCrApp. No. 115 of 2018 and **Ashley Hield v Regina** SCCrApp. No. 172 of 2019.

16. In **Claude Lawson Gray** the Court was concerned with an appeal by the Crown against a sentence of seven years for a manslaughter conviction. It was contended that the seven years was unduly lenient having regard to the decision in **Larry Raymond Jones**, which suggested that the proper range was 18 to 35 years imprisonment. In **Ashley Hield** the Court was concerned with an appeal against a sentence of 30 years for a conviction for manslaughter on the ground that it was unduly harsh.

17. In both **Claude Lawson Gray** and **Ashley Hield**, this Court, differently constituted, reviewed sentences that have been imposed for manslaughter over the years. The review shows that sentences of less than 18 years have been imposed and there have not been sentences of more than 35 years imprisonment imposed for manslaughter. Clearly, 50 years is outside the range. This Court's decision in **Claude Lawson Gray** was referred to in the appellant's submissions. The decision in **Ashley Hield** was not referred to by either counsel in their written submissions but was referred to and commented on during oral argument.

18. The appellant was 33 years old at the time of the homicide. He was 36 when he was convicted and 37 when he was sentenced. He was remanded into custody when he was arrested in January 2003. He was released on bail in December 2005. He was readmitted to prison in June 2006 for a drugs offence and released in July 2006, just prior to his murder trial in September 2006. He was convicted of murder on 26 September 2006 and has remained in prison ever since.

19. For a full year, from 26 September 2006 to 20 September 2007, he had to wait to be sentenced for his murder conviction, knowing that the prosecution was seeking the death penalty. From 20 September 2007 to 25 June 2009 (the date this Court substituted a conviction of manslaughter) he was under a death penalty (some 21 months).

20. From 25 June 2009 to 5 September 2023 (the date the Privy Council ordered the appellant to be resentenced) he was under a sentence of 50 years imprisonment (approximately 14 years). In short, he has been in prison as a convict from 26 September 2006 which is more than 18 years and when the period of remand from January 2003 to December 2005 is included, he has been in prison for almost 21 years.

21. The issue is what is the proper sentence to impose at this time. Does this case deserve the highest sentence under the **Larry Raymond Jones** guidelines? Clearly, both the trial judge and this Court regarded the case as warranting a severe punishment. The trial judge considered the death penalty appropriate, and this Court considered 50 years imprisonment appropriate.

22. Whilst an appellate court usually gives great respect to sentencing decisions of other courts, in this case the sentencing remarks of the trial judge were given in the context of a murder conviction. The 50-year sentence of the Court of Appeal was given without the benefit of any submissions by counsel on the issue and without reference to the decision in **Larry Raymond Jones** and any reasons to explain why it was departing from the guidelines given in that case.

23. We are satisfied that we are not restricted by those sentencing decisions. We exercise our own discretion having regard to the circumstances that prevail at this time.

24. We have had the benefit of submissions and have considered previous sentences imposed for convictions of manslaughter. Many have been referred to in the judgments of **Claude Lawson Gray** and **Ashley Hield.** There is no need to repeat them all in this judgment. It is necessary to remind ourselves that the imposition of a sentence is a matter of discretion and that we are not bound by any previous sentence imposed by any court in any other cases. We are aware, however, of the principle of parity in sentencing.

25. We will refer to a few decisions.

26. In **Donnell Rolle v R** [2011] 3 BHS J No 25 (which was referred to in **Claude Lawson Gray**) the appellant was tried for the murder of his wife; the attempted murder of his daughter and stepdaughter; and the arson of their home. He set fire to their home whilst his wife and children were in it. The wife died but the children survived. 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 children. The appellant was sentenced to fifteen years' imprisonment for manslaughter with effect from the date of his conviction. The Court of Appeal did not interfere with the 15-year sentence for manslaughter, although some members of the Court felt that the 15-year sentence was on the low side. It is to be noted that these offences did not involve firearms.

27. The prosecution has referred us to the decision of this Court in **Andy Francis v R** SCCrApp. No. 133 of 2009. In that case the appellant along with others were involved in an altercation on Cabbage Beach, Paradise Island with another group including the deceased. The two groups of individuals comprised approximately fifteen (15) young men each. The individuals, who were mostly known to each other and lived in adjoining communities, were known rivals. The fight involved mainly the throwing of rocks and bottles. However, when the deceased approached the appellant, a struggle ensued, a knife was produced by the appellant and the deceased was fatally stabbed to the chest. The appellant was convicted of murder and sentenced to prison for 25 years. On appeal, the murder conviction was quashed, and a verdict of manslaughter was substituted. Like this present case, without hearing any submissions by counsel as to the appropriate sentence for the manslaughter conviction, the Court of Appeal imposed the same sentence of 25 years for the manslaughter conviction. For reasons that I expressed in **Ashley Hield**, I do not regard **Francis** as a precedent to follow. In **Ashley Hield** I said:

> **"93. Regrettably, I cannot agree that the decision of this Court in Andy Francis v R SCCrApp. No. 133 of 2009 is a precedent for this Court to follow. The sentence of 25 years imposed by the Court for the substituted verdict of manslaughter was the same sentence imposed by the trial judge for a murder conviction. The sentence was not agreed by Newman, JA and was imposed without hearing submissions by counsel on that sentence. Ex facie, it is strange for the court to impose the same sentence as was imposed for a murder conviction on a conviction for a lesser charge of manslaughter. The fact that the decision was not a unanimous decision and made without submissions on the point makes the decision one that should be treated as peculiar to its own facts and not a precedent for a sentence on manslaughter."**

I am fortified in my view by the decision of the Privy Council in this case. However, I note that **Andy Francis** did not involve the use of a firearm.

28. In **Lorenzo Pritchard v R** SCCrApp. No. 130 of 2020 a man was shot in the head on 23 October 2016 during an altercation outside a nightclub in Abaco. According to witnesses, he was shot by someone sitting in a silver Honda. The driver of the silver Honda, along with the appellant, were charged with murder. The appellant was found not guilty of murder but was convicted of manslaughter. He was sentenced to 22 years and 5 months (which took into account his period on remand). He appealed his sentence on the ground that it was unduly harsh. The Court considered the decisions in **Larry Raymond Jones** and **Claude Lawson Gray** and affirmed the sentence. That case involved the use of a firearm.

29. In **Ashley Hield,** which was discussed during the oral hearing, the deceased asked two men on Gibbs Corner if they wanted to make five dollars by assisting him and his friend in changing a tire on his vehicle. One of the men robbed the deceased of his gold chain while his friend had gone to get the money changed to pay them. The deceased followed the appellant, requesting the return of his chain. The appellant hit the deceased in the head about five times with a conch shell. The deceased managed to get up but was again set upon by the appellant. As the deceased tried to leave, he was pursued by the appellant who still had the conch shell in his hand. The appellant's case was that in the course of helping the deceased change the tire, the deceased began rushing him. As a result, he became fed up and tried to leave. However, he and the deceased ended up "hassling" and the deceased's gold chain popped in the hassle. He said he tried walking away, but the deceased pursued him, seeking payment for his chain, which the deceased alleged had been popped by the appellant. The appellant said that the deceased pursued him, threw rocks at him from behind, and began charging at him with a broken bottle. It was then that he picked up the conch shell and hit the deceased with it. The appellant was charged with murder, however, the jury found him guilty of manslaughter. He was sentenced

to 30 years imprisonment and appealed his sentence as being unduly harsh. The appeal against sentence was allowed and a sentence of 20 years was substituted. That case did not involve the use of a firearm.

30. In **Marvin Edgecombe v DPP** SCCrApp. No. 145 of 2021 the appellant was charged with the stabbing death of David Hanna which occurred on 3 June 2017. On 15 September 2021, the appellant was convicted of manslaughter by a jury and on 7 December 2021, the court considered that a sentence of 25 years imprisonment was appropriate. The 25-year sentence was reduced to 20 years from the date of conviction to take into account the 5 years spent on remand prior to the conviction. His appeal against sentence was dismissed on the ground that it was not unduly harsh.

31. Finally, in **Christopher McQueen v DPP** SCCrApp. No. 18 of 2021 the appellant was charged with murder. He later pled guilty to the charge of manslaughter by reason of provocation. The sentencing judge considered 30 years imprisonment as the appropriate sentence but reduced it by 10 years for a plea of guilty and a further reduction of 38 months for time already spent on remand. His sentence was 17 years imprisonment from the date of conviction. He sought to appeal his sentence as being unduly harsh. His appeal against sentence was refused. That case involved the use of a firearm.

32. Neither counsel referred to the decisions in **Marvin Edgecombe** and **Christopher McQueen.** But we have referred to those cases simply to illustrate the kinds of sentences that have been imposed for a conviction of manslaughter. As I said earlier, neither sentence is binding on this Court.

33. It is against that background that we consider what is the appropriate sentence. This is an extremely serious offence. Using a high-powered rifle, the appellant shot into an occupied dwelling, killing an innocent young boy. This is an important fact and deterrence must be a critical consideration in the sentence to be imposed. Clearly that was the thinking behind the punishment given by the Court of Appeal when it imposed the 50-year sentence.

34. The parity principle is an important factor in sentencing. Whilst a sentencing judge, in the exercise of his discretion, is not bound by sentences imposed in any other case, the parity principle informs a judge that sentences should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. As I said earlier in the judgment, at the beginning of the hearing we inquired whether counsel in their research had found any case where a person had been sentenced to 35 years for a manslaughter conviction. Neither counsel referred us to any case where a sentence in excess of thirty years had been imposed for manslaughter.

35. In this case, we are of the view that the indiscriminate firing of a high-powered firearm warrants a high sentence. The sentence must serve as a deterrent to others. We regard a sentence of 30 years as appropriate. However, having regard to the period spent on remand the sentence

imposed must take that into account. In addition, we are satisfied that the period that the appellant spent in prison after conviction and before sentencing was inordinately long and unreasonable. Counsel for the prosecution conceded that point. The anxiety of spending a year waiting for a determination whether or not he would receive the death penalty is a matter we are entitled to take into account in exercising our discretion as to the sentence to be imposed.

36. For the past 21 years the appellant has spent his life in prison under a sentence of death and subsequently a sentence of 50 years. He has spent his time there with little hope of being released from prison in his lifetime, until the Privy Council in September last year quashed his sentence. The prosecution has also conceded that during that time he has had no infraction of the prison regulations.

37. In our judgment, having regard to the time spent on remand and the delay in this matter in all the circumstances, the appellant's sentence should be 26 years from the date of his conviction on 26 September 2006.

The Honourable Sir Michael Barnett, P

The Honourable Mr. Justice Evans, JA

The Honourable Mr. Justice Smith, JA