

**IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS
ON APPEAL FROM THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL DIVISION**

**CICA (Crim) Appeal No. 0007 of 2019
Ind 0008 of 2017
SC 0598 of 2017**

BETWEEN:

WILLIAM IAN RIVERS

APPELLANT

-and-



HIS MAJESTY THE KING

RESPONDENT

Before:

**The Rt Hon Sir John Goldring, President
The Hon Sir Richard Field, Justice of Appeal
The Rt Hon Sir Alan Moses, Justice of Appeal**

Appearances:

**Mr. Philip David Rule KC instructed by Mr Jonathon Hughes
of Samson Law for the Appellant
Mr. Scott Wainwright of the DPP for the Respondent**

Heard:

10 November 2023

Judgment delivered:

11 January 2024

JUDGMENT

Moses JA:

1. On 17 September, 2018 the applicant was convicted of murder following a trial by jury. On 29th March 2019 he was sentenced by the trial judge, Justice Williams (Ag.), to life imprisonment,

with a minimum term of 35 years. It is against this term he seeks to appeal. We say straightway that we give leave to appeal.

2. The appellant was also sentenced to 8 years imprisonment on his plea of guilty to possession of an unlicensed firearm and to 3 years imprisonment for unlawful use of that gun concurrently. The only issue at trial was as to his plea of guilty to manslaughter by reason of diminished responsibility, a plea which the jury rejected after hearing conflicting medical evidence as to his state of mind.
3. The judge failed to set out in his sentencing judgment the facts on the basis of which he passed sentence. This is unfortunate since they are an important feature of his decision that the minimum term should exceed the statutory minimum under Schedule 12 (3) of the Conditional Release of Prisoners Regulations, 2016 by five years.
4. The bare facts, however, cannot be disputed. The murder took place during the day outside a restaurant when other people were nearby. At about 2pm on 28th January 2017 Mark Travis Seymour was standing outside in the veranda area of Super C's restaurant, West Bay. He was drinking a beer and talking to others. The appellant approached him, riding a bicycle. Immediately he drew a gun from his waist-band and fired at him.
5. Mark Seymour tried to run away, holding his neck. The appellant fired two more shots and his victim collapsed to the ground, asking "Ian, why you doing this man?"
6. The appellant then turned the gun towards a female bystander, threatening her, "If you say anything". He then stood over Mark Seymour as he lay helpless on the ground and fired three further shots saying, "You deserve this" or words to that effect. Another witness heard him say that this is what "we does dogs".
7. The appellant rode away from the scene back to his house which was nearby. As he went, he said "I'm making sure you're dead".
8. Another witness, Joshua Pars, was also threatened when the appellant pointed his gun at him. As Mr Pars ran off, he heard a shot and then two further shots. Ashley Foster was walking past the appellant's partner's residence shortly after. From the veranda, the appellant asked where

she was going, and began to walk towards her, loading his gun. She was afraid for her life, and ran back towards her house. As she did so she heard three shots and hid in some nearby bushes.

9. When police officers arrived at the scene, the victim was already dead. The appellant was seen in the front of his residence nearby; they heard four gunshots. A number of members of the public were standing nearby. The appellant returned to his house, there then followed a stand-off for a period of about 2 ½ hours, as the appellant remained inside with other members of his family, including his wife and children; eventually he surrendered.
10. The police recovered 22 spent shell casings from the vicinity of the house. The firearm was recovered from the floor of the bathroom next to an empty bottle of rum with four live rounds in the cylinder. There were a further three live rounds on the bathroom floor.
11. At interview, two days later, the appellant admitted shooting and killing his victim. He said he believed he was one of a number of people who had been circling round his house day and night and wanted to draw him out so they could kill him or wait until he was asleep and then kill him. He said he believed that the victim had been paying his girlfriend for sexual favours. He had therefore killed his victim before the victim had had a chance to kill him.
12. He said he had found a firearm, which he used to kill the victim and found the ammunition. He denied that he had shot directly at the police, but said he was firing over their heads. He had, so he said “tripped out”, and he wanted to keep people away. He said he wanted the police to shoot and kill him.

Statutory Minimum Term

13. The terms of the Conditional Release of Prisoners Regulations, 2016 dictate the minimum period of imprisonment before release may be considered. By Schedule 12 (3):

For murder, the period is, unless there are extenuating or aggravating circumstances, exceptional in nature, in which case the court may impose a shorter, or longer period of incarceration, respectively;

(1) detailed consideration of aggravating or mitigating circumstances, may result in a minimum term of any length.

(2) aggravating circumstances that may be relevant to the offence of murder include-

(a) A significant degree of planning or premeditation;

(c) mental or physical suffering inflicted on the victim before death;

- (e) the use of duress or threats against another person to facilitate the commission of the offence;*
- (j) any other circumstances which may be considered relevant.*
- (3) Extenuating circumstances that may be relevant to the offence of murder include-*
 - (b) lack of premeditation;*
 - (c) the fact that the offender suffered from any mental disorder or mental disability which (although not falling within section 185(1) of the Penal code (2013 Revision) lowered the offender's degree of culpability;*
 - (d) the fact that the offender was provoked (for example by prolonged stress)*
 - (e) the fact that the offender acted to any extent in self-defence or in fear of violence;*
 - (h) any other circumstances which may be considered relevant.*

14. The Judge said that he was not persuaded that there were mitigating circumstances [72]. It is clear that he focussed exclusively on mitigating circumstances of an exceptional nature, within the meaning of Clause 12(3) of the Schedule.

15. He based this conclusion on his analysis of the medical evidence given at trial which went to the issue of diminished responsibility. He referred to Dr Myer's evidence given on behalf of the Crown that the appellant had no mental illness such as might rob the defendant of his ability to tell the difference between right and wrong. [74] and [75]. He was not suffering from a major mental illness, such that his mental responsibility would be substantially impaired. He did record that Dr Myers had found that the defendant was suffering from an "anti-social personality disorder". But then commented that that can be found in "about 98% of the prison population" [74].

16. The Judge concluded that:

[78] Based on all these considerations, I find myself unable to accept the argument advanced by the defence that mitigating circumstances of an exceptional nature—especially relating to his mental state reducing his culpability—exist in the circumstances of this case.

17. Having rejected the existence of any mitigation of an exceptional nature, the Judge turned immediately to the question of exceptional aggravating circumstances. He referred to *R v Ramoon and Douglas*, to which we will turn later, and said:

[79] I find the circumstances of this case to amount more or less to a public execution in broad daylight, ignited by a jealous rage, and with the Defendant thereafter unleashing a reign of terror on a relatively peaceful community in a relatively peaceful country.

[80] The sentence to be imposed will be one that reflects some consideration of the rehabilitation of the offender but will deter him from reoffending, deter like-minded

persons from offending, promote the maintenance of a peaceful and relatively safe society and promote respect for law and order.

18. The Judge then increased the minimum term to 35 years, commenting that he hoped the sentence would not be regarded as an “application” of *R v Ramoon* or any other case cited to him. [81].
19. It is plain, therefore, that the judge never considered whether there were mitigating circumstances, which, while falling short of being of an exceptional nature, might be relevant to consideration of an appropriate minimum term, over and above the statutory minimum term of 30 years.
20. The Judge was hampered by the fact that at the time he passed sentence this court had not given its decision in *Ramoon and Douglas* [2018] (2) CILR 563. This court rejected the explanation of Henderson J in *R v Ricketts* [2019] (2) CILR 666, to which the Judge referred. “Exceptional in nature” does not refer to frequency but to gravity. The President in upholding the sentence in *Ricketts* summarised what he had said in *Ramoon*:

17] (v)The sentencing exercise is pre-eminently an area for the application of judicial judgement and discretion. Each case will depend on its own facts. The judge will stand back and make an overall assessment of the circumstances as he finds them to be. He will no doubt take into account, among other, things, the prevalence of particular sorts of murder in the Cayman Islands, the protection of the public, and such aggravating and mitigating circumstances as he finds in a particular case.

[18] in short... In interpreting schedule 12, (2) and (3) (aggravating and extenuating circumstances), and the words “exceptional in nature” the factor in question must have sufficient weight and seriousness to take the case into the exceptional category and move the minimum term either upwards or downwards from the starting point of 30 years imprisonment.

21. This Court re-iterated that the use of a firearm is likely to be an aggravating circumstance of an exceptional nature ([17](iv)).
22. As a matter of law, the question whether there are mitigating circumstances is distinct from the question whether there are mitigating circumstances of an exceptional nature. If there are mitigating circumstances of an exceptional nature, they may *reduce* the minimum term of 30 years, absent any exceptional aggravating circumstances. But it does not follow that if there are no exceptional mitigating circumstances, there will be no mitigation whatever. Such mitigation will be relevant in cases where there are exceptional aggravating circumstances which will serve

to increase the minimum term. The judge must consider any mitigation which may be relevant to the question as to whether and how far the minimum term should be raised.

23. The instant case demonstrates that the consideration of the judge as to mitigating circumstances should not be limited to the statutory question as to whether they are exceptional in nature. In cases where he considers there to be aggravating circumstances of an exceptional nature, he must go on to consider whether there are mitigating circumstances. Even though mitigating circumstances are not of an exceptional nature, they may be such as to warrant a reduction from an uplift which might otherwise follow from a finding that there were aggravating circumstances of an exceptional nature.
24. The statutory scheme limits the rôle mitigating circumstances, which fall short of being exceptional, have to play in setting a minimum term. Whilst wishing again to emphasise what this court said as to the need to consider the overall circumstances of each case, and seeking to avoid being unnecessarily prescriptive, the first task of the judge, in cases where Schedule 12 (3) applies, is to consider whether there are aggravating or mitigating circumstances of an exceptional nature. If there are no mitigating circumstances of an exceptional nature but there are aggravating circumstances of an exceptional nature, he must, before identifying any appropriate uplift beyond 30 years, consider whether there are mitigating circumstances, which, while not being of an exceptional nature, may nevertheless serve to ameliorate the effect the aggravating circumstances of an exceptional nature would otherwise have.
25. Of course, if there are no aggravating circumstances of an exceptional nature, any mitigating circumstances, not of an exceptional nature, will have no rôle whatever to play in setting the minimum term. The judge in such a case must pass a minimum sentence of 30 years, whatever mitigation, not being of an exceptional nature, there may be.
26. The Judge's failure even to consider whether there was any mitigation which might have softened the impact of the aggravating circumstances of an exceptional nature he identified was an error of law. This court should in that event consider whether the conclusion the Judge reached was correct in the light of the criticisms Mr Rule KC forcefully advances both as to that failure and the Judge's views as to the gravity of the aggravating circumstances.

The Judge's Conclusion

27. The Judge was right not to regard other cases, where a minimum period was increased, as precedents [81]. But he clearly found the case of *Ramoon and Douglas* of assistance [79]. It does seem to us necessary, therefore, to follow the invitation of Mr Rule KC and consider the extent to which a contrast can and should be drawn between the facts of that case and of the instant appeal, where the minimum term in this case was raised to a similar extent. We do so, again emphasising that that case and other cases like it are not to be regarded as binding precedents as to the sentences passed.
28. *Ramoon and Douglas* was a case “*chillingly clinical in its planning and execution*”, as the trial judge, Quin J, put it. The shooting was in the nature of a public execution by two leaders of a notorious gang. They planned their getaway, and attempted deliberately to shoot the victim’s friend, failing only because the gun, which was never recovered, misfired. There were no mental health problems; the killing was plainly an exercise of power in the milieu of Island gangs.
29. Ramoon was guilty of an earlier offence of attempted shooting, which merited the imposition of a minimum term of one year more than that imposed on Douglas, 35 as opposed to 34 years.
30. It should not be thought that *Ramoon and Douglas* is the last word as to the appropriate increase in cases where aggravating circumstances of an exceptional nature are found. The minimum upheld in a double gangland murder in *Ricketts* was 40 years. Gang-related shootings have led to minimum periods of 34 years in *R v Borden* and *R v Ebanks* and 38 years in the case of the two murders in *Jeffers* (all these cases were heard with *Ricketts*).
31. In oral submissions, Mr Wainwright, with customary fairness, for the Crown, accepted that this appellant’s actions ought not be equated with the public execution in that case. The milieu that case illustrates is far removed from that in which this appellant mixed. This was not a gangland killing, with all the cold calculation typical of the way in which the leaders exercise their authority, in the belief that the fear they engender provides them with immunity. To the extent, therefore that the Judge increased the minimum term so as to equate with those cases, he was, in our view wrong and the result was manifestly excessive.
32. But the judge was right to identify aggravating circumstances of an exceptional nature. The appellant had, beyond doubt, lied about how he had acquired the gun and so much ammunition.

Its use both to kill and threaten others was an aggravating circumstance of an exceptional nature. He plainly had intended to use it in a public place, to kill his imagined rival. He then used it in a public place outside the restaurant.

33. He placed others at risk of death, and put at risk both police and members of his family during the siege of the house where his partner and children lived.
34. The Judge also referred, with justification, to the last moments of the victim's life when he must have realised it was the appellant's intention to kill him [60]-[62].
35. All of these features either separately or together are aggravating circumstances of an exceptional nature justifying an increase in the minimum term.
36. Mr Rule KC criticised the Judge for his emphasis on deterrence in his sentencing judgment. We agree that it is difficult to understand the reference to the need to deter the defendant, but we disagree with Mr Rule's submission that the 30 year minimum is all that the legislature intended was necessary for deterrence. Each year above 30 years is plainly intended to add to the deterrent effect which the legislation assumes to follow from sentences of the length for which the statute and regulations provide.
37. We do agree, however, that the judge should not have referred to a "*reign of terror*".
The court must acknowledge that the Judge heard the evidence, we did not. But such emotive language risks exaggerating the undoubted fear this appellant caused.

Conclusion

38. But there were mitigating circumstances, which must, as we have said, be weighed against the aggravating circumstances of an exceptional nature even if they do not justify a reduction in the minimum term of 30 years.
39. There was substantial evidence of the circumstances in which the appellant had lived prior to the murder. His partner of 19 years, with whom he had four children, made a statement to the police, at a time when she could not possibly have had in mind the deployment of a defence of diminished responsibility. She said that he had been homeless for six months and had been living under a makeshift roof between her and his brother's properties. He was depressed and

sometimes did not eat or sleep. Both she and her mother had concerns over his mental health. She and her 16 year old daughter said that he had been expressing the fear that someone would kill him while he was asleep. His mother said that he would call through the night screaming and saying that his life was under threat.

40. Although the jury rejected the defence of diminished responsibility, there was evidence of an unstable, depressed personality. There was an entry in his medical records of depression on 18 July 2007. He had received both anti-psychotic and anti-anxiety medication from February to July 2017.
41. At trial Dr Ajaz had diagnosed schizophrenia. Dr Myers, while rejecting this, had diagnosed Anti -Social Personality Disorder, Alcohol and Cannabis misuse disorders and “Polysubstance Intoxication”. The appellant had only one previous conviction for violence in 2008 for which he received a suspended sentence.
42. It does seem to us that these facts, taken as a whole, afford some mitigation, when weighed against the exceptional aggravating circumstances. They were not of a quality to justify any reduction below a minimum term of 30 years but they do lessen the impact of the exceptional aggravating circumstances the judge found.
43. It is not appropriate to adopt a mathematical approach of increase and reduction: we should follow what this court said in *Ramoon and Douglas*. We have reached the conclusion, overall, that the minimum term should be increased but, taking into account the mitigation, by two years and not five years. The time spent in custody of 791 days is to be deducted from that minimum period of 32 years imprisonment. To that extent this appeal is allowed.