



1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL DIVISION**
3

4 **Neutral Citation Number: [2025] CIGC (Crim) 5**
5 **INDICTMENT NO: 86 of 2022**
6

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9 **R**

10
11 **V.**
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13 **WAYNE ALPHONSO BELLAFONTE JR.**
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17 **Appearances:** **Mr. Scott Wainwright, Assistant Director, Office of the Director of Public**
18 **Prosecutions for the Prosecution**

19
20 **Ms. Sallie Bennett-Jenkins KC and Mrs. Lee Halliday-Davis for the Defence**
21

22
23 **Before:** **The Hon. Justice Cheryll Richards KC**
24

25 **Submissions Heard:** **20th November 2024**
26

27 **Sentence Judgment:** **9th January 2025**
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31 ***Criminal Law - Sentencing for Murder contrary to section 181 of the Penal Code (2019 Revision), The***
32 ***Conditional Release Act (2019 Revision), Whether the statutory threshold is met for a whole life term.***
33 ***Attempted Murder contrary to section 181 of the Penal Code (2019 Revision) and Possession of an***
34 ***Unlicensed Firearm contrary to s.15 (1) of the Firearms Act, Minimum Term.***



SENTENCE JUDGMENT

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4 1. The defendant is before the Court for sentencing. This follows on from his convictions after trial
5 for two charges of Murder contrary to section 181 of the *Penal Code* (2019 Revision), one charge
6 of Attempted Murder contrary to section 181 of the *Penal Code* (2019 Revision) and one charge
7 of Possession of an Unlicensed Firearm contrary to section 15 (1) of the *Firearms Act*.

8
9 2. The particulars of the offences are as follows: -

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11 **Count 1** - that he on the 1st day of July 2021, in the vicinity of Martin Drive, George Town, Grand
12 Cayman, Cayman Islands, together with others unknown, murdered Mark Ebanks.

13
14 **Count 2** - that he on the 1st day of July 2021, in the vicinity of Martin Drive, George Town, Grand
15 Cayman, Cayman Islands, together with others unknown, murdered Eldon Walton.

16
17 **Count 3** - that he on the 1st day of July 2021, in the vicinity of Martin Drive, George Town, Grand
18 Cayman, Cayman Islands, together with others unknown, attempted to murder Langley William
19 Wood Artega.

20
21 **Count 4** - that he on the 1st day of July 2021, in the vicinity of Martin Drive, George Town, Grand
22 Cayman, Cayman Islands, together with others unknown, had in his possession a firearm,
23 otherwise than in accordance with the terms of a Firearms Users' (Restricted) Licence.

24 25 **MAXIMUM SENTENCES**

26
27 3. By section 183 of the *Penal Code* the maximum sentence for the offence of Murder is life
28 imprisonment.



1 4. By section 194 of the *Penal Code*, the maximum sentence for the offence of Attempt to Murder
2 is life imprisonment.

3
4 5. The maximum penalty for the offence of Possession of an Unlicensed Firearms is twenty years
5 imprisonment. Section 39 of the *Firearms Act* prescribes a minimum sentence of 10 years
6 imprisonment with or without a fine where there is a conviction after trial in respect of a machine
7 gun, sub-machine gun, rifle, shot gun, pistol, or any lethal barreled weapon from which any shot,
8 bullet or other missile can be discharged. The minimum sentence may not be imposed where the
9 court is of the opinion that there are exceptional circumstances relating to the offence or to the
10 offender which justify it's not doing so.

11
12 **THE FACTS**

13
14 6. The facts may be summarised briefly as follows. On the night of the 1st July 2021, the defendant
15 and two other persons travelled in a white VW Cabriolet motor vehicle from the Watlers Road
16 area to Martin Drive in the vicinity of the Globe Bar in George Town. All three persons alighted
17 from the vehicle and went towards the Bar. They were armed with firearms. All three were
18 masked.

19
20 7. The three victims Mr. Mark Ebanks, Mr. Eldon Walton and Mr. Langley Artega, were standing
21 together outside the Bar engaged in conversation. The defendant and the other two persons
22 approached the three victims and began firing shots. Mr. Ebanks received fatal injuries from
23 which he died. Mr. Walton received injuries from which he later died after being taken to
24 Hospital. Mr. Artega received injuries and was hospitalised.

25
26 8. The ballistics evidence led at trial was that some thirty-one shots had been fired from three
27 different firearms.

28
29 9. The Prosecution's case which the jury must have accepted is that the defendant was injured at the
30 scene. He and the other two persons left the scene in the same white vehicle. The vehicle was
31 shown on Closed Circuit Television Camera ("CCTV") footage to travel to the Watlers Road area
32 where it was abandoned. The defendant thereafter travelled in a Black Honda Accord into the



1 district of West Bay where he alighted, changed clothing and sought the assistance of a passerby
2 to take him back to George Town to the Hospital.

3
4 10. The white vehicle was subsequently recovered by the Police. The Black Honda Accord belonged
5 to the mother of the defendant. It too was recovered by the Police. The CCTV evidence showed
6 that it had traveled earlier on that evening from Bodden Town to the district of West Bay and
7 from West Bay to the vicinity of the Watlers Road area shortly before the White VW left that area
8 to the scene of the Murder.

9
10 11. The prosecution's case at trial was that the defendant was connected to both vehicles by DNA
11 material found in blood in the passenger seats.

12
13 **VICTIM IMPACT STATEMENTS**

14
15 12. Mr. Langley Artega has provided a Victim Impact Statement ("VIS") dated 30th September 2024.
16 He states that the bullet which hit him entered his lower left back and exited lower down on the
17 right side of his back. He was treated at the hospital and discharged with follow up out patient
18 care. The wound has healed, however in cool temperatures he feels itching inside his body where
19 the bullet went through him.

20
21 13. He states that he does not know the identity of the other two shooters who were not arrested and
22 is in fear and on edge that he may be targeted. He is especially nervous when he is with a member
23 of his family. He reacts to unexpected noises and fireworks. He thinks regularly about the day of
24 the incident, and it affects him when he speaks to the partners of his two friends, Mr. Ebanks and
25 Mr. Walton.

26
27 14. Lushonda Lucretia Walton has provided a statement dated 3rd October 2024. She is the daughter
28 of Eldon Charles Walton. She details some of the history of his life and states that the effect of
29 losing him has been massive. She grew up without her mother who was killed when she was
30 about one year old. She was raised by her grandparents and her father was the person that she
31 turned to for help and advice. He was the person that she would call for any difficulty. She states
32 that she feels lonely that he has gone. Her grandparents who are elderly and in ill health also



1 looked to him for assistance around the house. She states that besides her sister she has no one to
2 turn to since her father was killed. He was all they had, and she feels lost without him.

3
4 **ANTECEDENT HISTORY**

5
6 15. The defendant is now 33 years old. He has 24 previous convictions. These are in the main for
7 drug offences. There are also convictions for Burglary, Theft, Assaulting and Resisting Police
8 and Damage to Property. On the 20th April 2021, the defendant was sentenced to a Probation
9 Order for one year for the offence of Common Assault.

10
11 16. The Court has also been provided with a basis of plea dated 21st July 2022 for charge 1956/21, a
12 charge of Assault Occasioning Actual Bodily Harm. This indicates that on the 17th May 2021, the
13 defendant was inside a night club at the Strand Plaza. He received information that his brother
14 was being beaten up outside the club. The defendant went outside and saw his brother on the
15 ground. Five men were hitting his brother. The men ran on the defendant's approach. The
16 defendant accepted hitting the victim in that case. The Summary of Facts attached indicates that
17 the victim had been standing outside the night club at the time. Two of the victim's teeth fell out
18 of his mouth because of the hit which he received.

19
20 **SOCIAL INQUIRY REPORT**

21
22 17. Defence Counsel has drawn to the Court's attention that in respect of charge 1956/21 the
23 Department of Community Rehabilitation provided to the Summary Court a Social Inquiry
24 Report about the defendant dated 13th September 2022. This has details of the defendant's
25 troubled childhood and background. His early years were marked by instability and difficult
26 circumstances. The Probation Officer expressed the view on page 11 of the Report that his early
27 life has left an indelible mark on him and that there appears to be residual anger and emotional
28 trauma. There is said to be evidence of emotional deficits and of early and diverse antisocial
29 behaviour and a pattern of generalised trouble.



1 **THE ISSUES**

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3 18. The main issues joined on this sentencing are in respect of the offences of Murder, whether a
4 whole life order is applicable given that two persons were shot and killed and if not, whether
5 there are aggravating or extenuating circumstances such that the sentence should be higher or
6 lower than the statutory minimum term.
7

8 **THE STATUTORY FRAMEWORK**

9
10 19. The *Conditional Release Act* (2019 Revision) provides for a minimum sentence of 30 years for
11 the offence of murder before a prisoner is eligible for conditional release. This may be lower or
12 longer depending on whether there are exceptional circumstances of an extenuating or
13 aggravating nature. Section 14 (1) states:
14

15 “Notwithstanding any other Law to the contrary, when sentencing a prisoner to a term of
16 imprisonment for life, the court shall specify the period of incarceration the prisoner shall
17 serve before the prisoner is eligible to be considered for conditional release on licence, the
18 period being such as the court considers appropriate to satisfy requirements of retribution,
19 deterrence and rehabilitation, but for murder, the period shall be thirty years before the
20 prisoner is eligible for conditional release unless there are —

- 21
22 (a) extenuating circumstances, exceptional in nature, in which case the court may
23 impose a lower period of incarceration; or
24 (b) aggravating circumstances, exceptional in nature, in which case the court may
25 impose a longer period of incarceration.”
26

27 20. By s.14 (1A) of the *Act* subject to exceptional extenuating circumstances the period specified
28 shall be whole life where the murder is of two or more persons in a particular context, or the
29 offender has previously been convicted of murder. The section states in part: -
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31 “(1A) Notwithstanding subsection (1) and any other Law to the contrary, where any of the
32 following circumstances are present —

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- (a) the murder of two or more persons, where each murder involves any of the following —
 - (i) a substantial degree of premeditation or planning;
 - (ii) the abduction of a victim; or
 - (iii) sexual or sadistic conduct;
- (b) ...
- (c) ...
- (d) a murder by an offender previously convicted of murder, the court shall, when sentencing a prisoner to a term of imprisonment for life, specify the period of incarceration the prisoner shall serve before the prisoner is eligible to be considered for conditional release on licence, the period being such as the court considers appropriate to satisfy requirements of retribution, deterrence and rehabilitation, the period shall be whole life before the prisoner is eligible for conditional release unless there are extenuating circumstances, exceptional in nature, in which case the court may impose a lower period of incarceration.



(2) In making a decision under subsection (1)(a) or (b) or (1A) the court shall state the extenuating circumstances or the aggravating circumstances, as the case may be.”

21. Section 21 of the *Act* provides for Regulations to be made. Schedule 12 to the Regulations provides a non-exhaustive list of aggravating and extenuating circumstances.

“Schedule 12

2. (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;
- (b) the fact that the victim was particularly vulnerable because of age or disability;
- (c) mental or physical suffering inflicted on the victim before death,



- 1 (d) the abuse of a position of trust;
- 2 (e) the use of duress or threats against another person to facilitate the commission of the
- 3 offence; (f) the fact that the victim was providing a public service or performing a public
- 4 duty;
- 5 (g) concealment, destruction or dismemberment of the body;
- 6 (h) previous convictions;
- 7 (i) abduction and sexual or sadistic conduct; and
- 8 (j) any other circumstances which may be considered relevant.

9

10 (3) Extenuating circumstances that may be relevant to the offence of murder include –

- 11 (a) an intention to cause serious bodily harm rather than to kill;
- 12 (b) lack of premeditation;
- 13 (c) the fact that the offender suffered from any mental disorder or mental disability which
- 14 (although not falling within section 185(1) of the Penal Code (2013 Revision)), lowered
- 15 the offender's degree of culpability;
- 16 (d) the fact that the offender was provoked (for example, by prolonged stress);
- 17 (e) the fact that the offender acted to any extent in self-defence or in fear of violence;
- 18 (f) a belief by the offender that the murder was an act of mercy;
- 19 (g) the age of the offender; and
- 20 (h) any other circumstances which may be considered relevant.

21

22 **Previous convictions**

23 3. (1) In considering the seriousness of an offence committed by an offender who has one

24 or more previous convictions, the court must treat each previous conviction as an

25 aggravating circumstance if (in the case of that conviction) the court considers that it can

26 reasonably be so treated having regard, in particular, to –

- 27
- 28 (a) the nature of the offence to which the conviction relates and its relevance to the current
- 29 offence; and
- 30 (b) the time that has elapsed since the conviction.

31 (2) Any reference in this schedule to a previous conviction is to be read as a reference to a

32 previous conviction by a court in the Cayman Islands.



1 (3) The court may treat a previous conviction by a court outside the Cayman Islands as an
2 aggravating circumstance in any case where the court considers it appropriate to do so.”
3

4 **APPLICABLE PRINCIPLES**

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6 22. In the case of *Ramoon and Douglas*¹ the Cayman Islands Court of Appeal considered appeals
7 against minimum terms of 34 and 35 years for the offence of murder.
8

9 23. The appellants argued on appeal against sentence *inter alia* that to constitute an exceptional
10 circumstance, the circumstance must be unusual or uncommon. It was also argued that the
11 possession of a firearm was not an aggravating circumstance as the possession and use of firearms
12 in cases of murder was commonplace in the Cayman Islands.
13

14 24. The Court held that the word exceptional in the statute relates to the seriousness of the conduct
15 and not to the frequency of it. A court should therefore consider whether the circumstances of the
16 murder in question were so serious that the nature of the case was therefore exceptional such as
17 to justify imposing a longer period of punishment. Similarly, when considering extenuating
18 circumstances, the court would consider not how often such circumstances may occur but
19 whether their weight is so exceptional as to justify the imposition of a lower term of
20 imprisonment.
21

22 25. The Court said that the Sentencing Judge was entitled to take into account the Attempted Murder
23 of another in sentencing. It was an important part of the circumstances. It would have been
24 artificial to have ignored this evidence as part of the overall assessment.
25

26 26. On the issue of whether the use of a firearm could constitute an exceptional circumstance the
27 Court said this: -
28

29 “108 The words of para. 2 (2) are clear. The aggravating circumstances set out are not
30 intended to be exhaustive (see s.2 (2) (j) in particular). Moreover, it cannot have been the
31 intention of the Legislative Assembly to exclude as a possible aggravating circumstance

¹ [2018] 2 CILR 563



1 the use of a firearm, while, (if we are right in our interpretation of s.2 (2)), at the same time
2 contemplating the use of, for example, a knife as a possible aggravating circumstance.

3
4 109 In our view, whether or not in any given case the use of a particular weapon, such as
5 a firearm, amounts to an aggravating circumstance must depend on all the circumstances
6 of the case as a whole. That having been said, it does seem to us that in most cases the pre-
7 possession and use of firearms is likely to amount to an aggravating feature.”

8
9 27. The Appellate Court provided guidance as to how a judge should approach sentencing in a case
10 of murder: -

11
12 “110...Each case will depend on its own facts. The judge will stand back and make an
13 overall assessment of the circumstances as he finds them to be. He will no doubt take into
14 account, among other things, the prevalence of particular sorts of murder in the Cayman
15 Islands, the protection of the public and such aggravating or mitigating circumstances as
16 he finds in the particular case. He will then make and explain his decision.”

17
18 28. In the case of *R v Ian Stewart and Others*² the English Court of Appeal considered the application
19 of Schedule 21 of the *Sentencing Act* 2020. Paragraph 2 (1) thereof provides for the making of
20 a whole life order as a starting point where the offender was aged 21 years or over when the
21 offence was committed and the Court considers that the seriousness of the offence or the offences
22 is exceptionally high. Paragraph 2(2) provides that the cases which would normally fall within
23 the category of exceptionally high seriousness include the following:

24
25 “(2) Cases that would normally fall within sub-paragraph (1)(a) include—

26 (a) the murder of two or more persons, where each murder involves any of the
27 following—

28 (i) a substantial degree of premeditation or planning,

29 (ii) the abduction of the victim, or

30 (iii) sexual or sadistic conduct,

² Rv. Ian Stewart, Wayne Couzens, Emma Louise Tustin, Thomas Samuel Hughes, Jordan Monaghan [2022] EWCA Crim 1063



- 1 (b) the murder of a child if involving the abduction of the child or sexual or sadistic
- 2 motivation,
- 3 (c) the murder of a police officer or prison officer in the course of his or her duty,
- 4 where the offence was committed on or after 13 April 2015,
- 5 (d) a murder done for the purpose of advancing a political, religious, racial or
- 6 ideological cause, or
- 7 (e) a murder by an offender previously convicted of murder."
- 8

9 29. The Court stated that this paragraph is clear in providing that "each murder" must involve one of
10 the three criteria:

11
12 "When an offender murders two persons and any of the three criteria identified is involved
13 in both murders a whole life order would be the normal starting point. It is also concerned
14 with the murder of more than two persons. The language of the subsection is that "each
15 murder" must involve one of the three criteria. That cannot be interpreted as suggesting
16 that a murder of three or more people would not be covered by the subsection if only two
17 of the murders fell within the criteria, but not the third murder or more."

18
19 30. The statutory framework in England and Wales provides for different starting points depending
20 on the level of seriousness. Where the seriousness is particularly high the appropriate starting
21 point for offenders aged 18 years or over is 30 years. Cases at this level of seriousness include a
22 murder involving the use of a firearm or explosive and cases involving the murder of two or more
23 persons.

24
25 31. There is also provision for a minimum term of 25 years for a murder with a knife which was
26 carried to the scene of the crime and 15 years for murders committed by other means.

27
28 32. The Court considered the application of the statutory framework for the making of whole life
29 orders as applied in a number of cases. The Court derived fifteen principles from these cases
30 which it described as well established. These principles include that each case is fact specific and
31 that the sentencing judge must undertake a careful analysis of all the relevant facts. The judge
32 must do this before concluding that a very lengthy finite term will not be sufficient. A whole life



1 order should only be imposed where the seriousness of the offending is exceptionally high and
2 only in a clear rather than border line case.

3
4 33. Where the judge has identified an appropriate starting point the judge must thereafter consider
5 the aggravating and mitigating factors which depending on their potency may lead to an increase
6 or decrease from the starting point.

7
8 34. The principles derived are: -
9

10 "i) For offences committed before 28 June 2022, a whole life order may only be considered
11 where a sentence of life imprisonment is imposed on an offender who is over the age of 21
12 (section 321(3)(a)). Section 126 of the Police, Crime and Sentencing Act 2022 extends the
13 availability of a whole life order to offenders aged 18, 19 and 20 from that date.

14
15 ii) A whole life order may only be imposed if the court considers that the seriousness of the
16 offence(s) is such that it should not make a minimum term order (section 321(3)(b)):

17
18 iii) "A whole life order should be imposed where the seriousness of the offending is so
19 exceptionally high that just punishment requires the offender to be kept in prison for the
20 rest of his or her life. Often, perhaps usually, where such an order is called for the case will
21 not be on the borderline. The facts of the case, considered as a whole, will leave the judge
22 in no doubt that the offender must be kept in prison for the rest of his or her life. Indeed, if
23 the judge is in doubt this may well be an indication that a finite minimum term which leaves
24 open the possibility that the offender may be released for the final years of his or her life is
25 the appropriate disposal. To be imprisoned for a finite period of thirty years or more is a
26 very severe penalty. If the case includes one or more of the factors set out in [the schedule]
27 it is likely to be a case that calls for a whole life order, but the judge must consider all the
28 material facts before concluding that a very lengthy finite term will not be a sufficiently
29 severe penalty." *Jones* at [10].
30

31 iv) It is "a sentence of last resort for cases of the most extreme gravity" which is "reserved
32 for the few exceptionally serious cases" where "the judge is satisfied that the element of



1 just punishment requires the imposition of a whole life order" – *Wilson* at [14], *Reynolds* at
2 [5(iv)]. In a borderline case, if the judge is in any doubt as to whether this standard is
3 reached, a minimum term order is likely to be the appropriate disposal – *Jones* at
4 [10], *Reynolds* at [5(ii)].

5
6 v) The statutory scheme "does not shut the door" on the possibility of a whole life order
7 where a discretionary sentence of life imprisonment is imposed for a crime other than
8 murder, but such a case would be "wholly exceptional" – *McCann* at [89]. All but one of
9 those currently serving whole life orders were convicted of murder and, in most cases,
10 more than one offence of murder.

11
12 vi) In assessing whether the seriousness of the offence(s) warrants a whole life order, the
13 court must have regard to the general principles set out in Schedule 21 (section 322(3)).
14 Each case will depend critically on its particular facts. The sentencing judge must undertake
15 a careful analysis of all the relevant facts as "justice cannot be done by rote" – *Peters* at
16 [5], *Reynolds* at [5(i)], *Jones* at [6]. Schedule 21 must be applied in a flexible, not rigid,
17 way to achieve a just result – *Height* at [29]. Because each case depends on its own facts,
18 comparison with other cases is unlikely to be helpful. It is the application of the principles
19 to a careful assessment of the relevant facts of the case that is important.

20
21 vii) The court must first identify the appropriate starting point. Where the seriousness of
22 the offence(s) is exceptionally high, then the starting point is a whole life order. Where the
23 seriousness of the offence(s) is "particularly high" the starting point is a minimum term of
24 30 years. Otherwise, the starting point will be 15 or 25 years depending on the
25 circumstances.

26
27 viii) Cases of murder involve taking human life where the offender intended to kill or cause
28 really serious harm. All murders are necessarily extremely serious crimes. For that reason,
29 they attract the mandatory life sentence. The requirement for the seriousness to be
30 "exceptionally high" before a whole life order is made arises in that context. The case must
31 be exceptionally serious, even in the context of murder. The period that an offender is
32 required to serve, in the case of a minimum term before the parole board can consider



1 release, encompasses every type of murder from true mercy killings at one end of the
2 spectrum to the most evil at the other.

3
4 ix) The period that a murderer must serve does not reflect the value the life taken away and
5 does not attempt to do so.

6
7 x) Paragraphs 2(2) and 3(2) of Schedule 21 list the types of case where the seriousness is
8 "normally" to be regarded as "exceptionally high" or "particularly high". These are not
9 exhaustive lists. The legislation does not exclude the possibility that other cases might
10 reach the indicted level of seriousness, though such cases are "probably rare" – *Height* at
11 [28] The same applies in reverse: a case that nominally comes within the ambit of
12 paragraphs 2(2) or 3(2) may not reach that level of seriousness because of the particular
13 facts – *Height* *ibid*. The conclusion in *Height* was that it will be rare for a case that does
14 not come directly within the scope of paragraph 2(2) to be regarded as being exceptionally
15 serious.

16
17 xi) Having determined the appropriate starting point, the court must consider the
18 aggravating and mitigating factors. These may result in a departure from the starting point.
19 If the starting point is a whole life order, then the balance of mitigating factors and
20 aggravating factors might result in the imposition of a minimum term order. That balance
21 is not struck by listing aggravating and mitigating factors and then considering which list
22 is the longer. Both aggravating and mitigating factors may vary in potency. The statutory
23 factors which indicate that a whole life order should be considered would themselves
24 normally be aggravating factors. Care must be taken not to double count. Conversely, if the
25 starting point is a minimum term order, then the balance of aggravating factors and
26 mitigating factors might result in the imposition of a whole life order.

27
28 xii) A plea of guilty is relevant when determining whether the seriousness of a case is
29 exceptionally high and requires a whole life order – *Jones* at [15], *Reynolds* at [5(iii)].
30

1 xiii) If the test in section 321(3) is satisfied, then a whole life order must be imposed.
2 Otherwise, a sentence of life imprisonment must be subject to a minimum term order
3 (section 321(2)).
4

5 xiv) A whole life order means that the statutory early release provisions do not apply. It
6 does not preclude the possibility of release by the Home Secretary on compassionate
7 grounds. A decision whether to release on compassionate grounds may be challenged in
8 judicial review proceedings. The Grand Chamber of the European Court of Human Rights
9 has confirmed (in agreement with this court's decision in *McLoughlin*) that "the whole life
10 sentence... [is] in keeping with Article 3 of the Convention" - *Hutchinson* at [72].
11

12 xv) The assessment of seriousness is for the sentencing judge. On an appeal, or a reference
13 by the Law Officers, this court will not substitute its own assessment for that of the
14 sentencing judge. On an appeal against the imposition of a whole life order or a reference
15 by the Attorney or Solicitor General this court will interfere only if the sentence was
16 manifestly excessive or unduly lenient, as the case may be: *Peters* at [9]."
17

18 35. In applying the principles to the five cases on appeal the conclusions included the following.
19

20 36. In the case of *Ian Stewart*, the Court emphasised that given the structure of the legislation the
21 whole life sentence would only be applicable where the court was sentencing for two or more
22 murders at the same time. The appellant had previously been convicted for a murder which was
23 second in time to the one for which he was before the Court.
24

25 37. In the case of *Wayne Couzens* a whole life term was held to be justified although there had been
26 only one murder, because of the unique circumstances and aggravating factors. These included
27 that the appellant had been a police officer who had misused his position in order to commit the
28 offences of rape, kidnap and murder. There was significant planning and pre-meditation, and the
29 victim suffered significant mental and physical suffering.
30
31



1 38. The application for leave to appeal in the case of *Jordan Monaghan* was brought by the Solicitor
2 General on the basis that the sentences imposed of life imprisonment with a minimum term of 40
3 years was unduly lenient and that a whole life order ought to have been imposed. The defendant
4 had been sentenced in respect of three offences of murder committed over a period of seven years
5 and two offences of attempted murder.

6
7 39. The submission on his behalf was that two of the murders, those of two children did not involve
8 a substantial degree of planning or premeditation. While the murders were not spontaneous, little
9 was done to plan for or put into action a plan to kill. The Court accepted that the case was not
10 one which fell within paragraph 2(2) but was one which called for a substantial uplift from the
11 starting point of 30 years.

12
13 40. The Court's view was that there was a need to increase the starting point because of the
14 aggravating features and the associated offence of attempted murder. Aggravating factors
15 included the fact that three murders had been committed, each on separate occasions, the
16 motivations for the commission of the murders which included coercion for his partner to remain
17 in a relationship with him. One of the murders involved substantial planning and premeditation
18 and was an abuse of his position of trust. The offender's previous convictions, though of modest
19 weight were also an aggravating factor. The minimum term of 40 years which was imposed was
20 held to be unduly lenient, and a term of 48 years was substituted.



21
22 **CASES CITED BY THE DEFENCE**

23
24 41. Defence Counsel drew to the Court's attention a number of cases including the following. In the
25 case of *R v KGS*³, the Solicitor General appealed a sentence as unduly lenient. It was imposed
26 following guilty pleas to two murders. The offender shot and killed JD the father of his grandson.
27 The offender also shot and killed the father of JD. The offender disapproved of JD and
28 disapproved of him having additional contact with his grandchild. JD had made an application to
29 the Court to increase the level of contact. Shortly after the Family Court made an interim ruling
30 preserving the status quo, the offender went to the home of JD and shot him to the chest and head.

³ [2004] EWCA Crim 85



1 About 20 minutes thereafter he went to the home of JDs' father some six miles away and shot
2 him three times.

3
4 42. It was accepted that the murders did not involve a substantial degree of premeditation and
5 planning. The Court rejected the submission that the case fell on the borderline of meriting a
6 whole life tariff. The Court said that applying the principles in the case of *R. v Stewart* it did not.

7
8 43. Counsel on behalf of the Solicitor General submitted that as it involved the murder of two persons
9 the case was at least of particularly high seriousness such that it merited a starting point of a
10 minimum term of 30 years with aggravating features thereafter to be considered.

11
12 44. The Court noted that:

13
14 “ 57. This was a case of particularly high seriousness because there were two murders.
15 These were not, as sometimes happens, two victims at a scene killed in rapid succession in
16 the course of a single incident. These murders involved two separate incidents, separated
17 in time, separated in place, with their own individual premeditation and planning, and with
18 travel between them and reloading of the shotgun in between.

19
20 58. The use of firearms was an important aggravating feature, as we have said, requiring
21 a significant upwards adjustment measured in years.

22
23 59. Further aggravation is to be found in the significant degree of planning and
24 premeditation, which was accurately described by the judge as stretching back for a
25 considerable period, at least contingently.”

26
27 45. Other aggravating factors included that there was the intention to deprive a seven year old child
28 of his father and grandfather, that the effect of the conduct was to interfere with the course of
29 justice and the victims were each shot in their homes.

30
31 46. The Court said that mitigating factors such as age and good character were of limited weight
32 because “*the harm and culpability of the offending are the principal factors to be taken into*
33 *account in sentencing serious offending of this nature.*”



1 47. The Court concluded that the aggravating and mitigating factors did not balance each other out
2 as the sentencing judge had found and that the sentence imposed of 25 years was unduly lenient.
3 A term of 30 years less the number of days spent on remand was substituted.

4
5 48. In *R v Hakeem Kigundu*⁴, the Appellant had pleaded guilty to two counts of murder. A whole
6 life order was imposed. The Appellant had set fire to a block of twenty-four flats. Two persons
7 were killed. The fire was set in revenge for the complaints made by occupants about the
8 appellants' antisocial behaviour.

9
10 49. The English Court of Appeal did not reach a concluded view but said that the ordinary and natural
11 meaning of the relevant part of the Schedule does not necessarily exclude the man who plans to
12 kill a number of people all at once. The Court said that "*cases in which a whole life order are*
13 *to be imposed are rare and reserved for the most serious and egregious types of murder.*"

14 15 **THE SUBMISSIONS**

16 17 **MURDER**

18
19 50. Counsel for the prosecution submitted that it is accepted that a whole life order is a measure of
20 last resort and is not to be imposed in border line cases. It is to be imposed in cases of exceptional
21 seriousness. Counsel submitted that in considering whether this case rises to the level of a whole
22 life order there are features of the evidence which are indicative of planning. These include that:

- 23
24 i) At least three persons were involved;
25 ii) The individuals had their faces covered;
26 iii) At least three firearms had been sourced in advance of the commission of the offences;
27 iv) A large amount of ammunition had been sourced;
28 v) Two vehicles were used;
29 vi) The vehicles were switched both before and after the killings;
30 vii) The movements of the vehicles both before and after the killings were almost identical;
31

⁴ [2024] EWCA Crim 193

1 51. Counsel also noted that the defendant has previous convictions albeit for offences of an unrelated
2 nature (i.e. no offences of serious violence or offences involving weapons).

3
4 52. Counsel submitted that if the level of planning fell short of what is required for a whole life
5 sentence, then the circumstances are such that they would elevate a minimum term beyond 30
6 years.

7
8 53. Counsel relied on the case of *Ramoon and Douglas* including for the submission that the pre-
9 possession and use of a firearm will amount to an aggravating feature which is exceptional in
10 nature. Counsel submitted that in addition the following are seven aggravating factors:-

- 11
12 i) Group action – there were at least three offenders acting in concert with one
13 another in the commission of these offences;
- 14 ii) At least three firearms were involved in this incident;
- 15 iii) A large number of shots were fired (in excess of thirty);
- 16 iv) Location of offending – these murders took place immediately outside licensed
17 premises where members of the public would likely congregate;
- 18 v) The timing of the offences – late at night (approximately 11pm);
- 19 vi) The offenders covered their faces;
- 20 vii) Attempts were made to conceal evidence in the aftermath of the offending. Counsel
21 submitted that the jury, in light of their verdicts, must have found that the defendant
22 changed clothing prior to attending the George Town Hospital. Furthermore, the
23 jury must have found that the defendant attempted to dispose of a cellphone used
24 in the killings by placing it in the toilet cistern.

25
26 54. Counsel submitted that when one discharges a firearm outside liquor licensed premises, there is
27 always a risk that bystanders will be injured or killed.





- 1 55. Counsel for the defence submitted that a whole life order is a measure of last resort. The minimum
2 of 30 years is a very severe penalty indeed. It is submitted that the instant case is not a highly
3 exceptional case where such a measure is demanded.
4
- 5 56. Counsel submitted that the previous convictions of the defendant lack any significant use of
6 violence and lack any association with a firearm. The defendant is effectively not marred by the
7 concept of use of violence.
8
- 9 57. It is submitted that while there are case specific examples, there is no settled position which
10 establishes that murder of two persons without more can attract a whole life sentence. It is further
11 submitted that while the prosecution says that there is evidence of some planning, there is a
12 marked absence of a substantial degree of planning. It is not unusual for there to be group
13 offending, covering of faces and the use of firearms.
14
- 15 58. It is suggested that there is in this case a real absence of the type of features that may attract a
16 whole life sentence. Counsel said that there is a marked absence of sadism or sexual deviation.
17 The planning which has been identified is not such as can be described as substantial. There is
18 no history of a long dispute or motive. There is no evidence of reconnoiter of the premises, no
19 evidence of threats over time. All of these are key markers that would be sufficient to bring this
20 measure of last resort into consideration.
21
- 22 59. Counsel's primary submission is that from an analysis of the authorities (in particular *R v. Ian*
23 *Stewart and Others, KGS* and *Kigundu*) referenced above as well as other cases including
24 *Marcus Osbourne*⁵, *Lucy Letby*⁶ and *Damien Bendall*⁷, the whole life order has to be related to
25 separate and distinct killings which may be divorced in time one from the other. In some cases,
26 there is a matter of months or even years as in the case of *Stewart*.
27
- 28 60. Counsel noted that the case of *Couzens* involved a level of planning. There was the hiring of a
29 vehicle, use of a police car, identification of a lone female and transport to a remote area where
30 the victim was raped and murdered. Her body was desecrated. It was deemed necessary to impose

⁵ Crown Court at Leeds, Unreported Judgment dated 1st March 2024

⁶ Crown Court at Manchester, Unreported Judgment dated 21st August 2023

⁷ Paragraph 23 of Written Submissions of Defence Counsel dated 14th November 2024



1 a whole life order despite the fact of a single killing. Counsel said that all the other cases were
2 marked by a key feature of separation of time.

3
4 61. Counsel submits that the imposition of a whole life term in this case would require a distance of
5 time between the killings.

6
7 62. Counsel submitted that the 30 year starting point is accepted and that there is a list of aggravating
8 factors which has been put forward. Counsel said that face coverings and multiple individuals are
9 not such unusual features that they should aggravate the minimum term.

10
11 63. Counsel asked the Court to note the information contained in the pre-sentencing report as is
12 summarised in written submissions⁸. This refers to specific features in the defendant's early life
13 which I will not read out. Counsel submits that that these are features which are exceptional in
14 nature.

15
16 64. In addition, Counsel submitted that the defendant completed high school and graduated with
17 passes in multiple subjects. He enrolled in tertiary education after leaving school but did not
18 complete his course as he had a negative emotional response to the death of a friend. He thereafter
19 worked in various industries before starting a landscaping company with a relative in 2021.

20
21 65. He has a young child with whom he has a close relationship and is also close to his family i.e. his
22 mother, grandmother and siblings who remain supportive of him.

23
24 66. It is submitted that the proper sentence should be a determinant one and that the age of the
25 defendant brings its own difficulties. It means that a large portion of the defendant's life will be
26 spent in custody in the high-risk unit with limited interaction. Counsel said that any period of
27 incarceration is powerful in these circumstances.

28
29 **ATTEMPTED MURDER**

30
31 67. Counsel for the prosecution submitted that the culpability is at the level of Category 1 because of
32 the use of a lethal weapon which was brought to the scene for the purpose of causing injury. It is

⁸ Paragraph 35 of Defence Written Submissions dated 14th November 2024



1 submitted that there was some physical or psychological harm sustained by Mr. Artega. The
2 starting point is submitted to be 20 years imprisonment with a range of sentence of 17 to 25 years.

- 3
4 68. Defence Counsel submitted that the evidence falls short of the high standard required for a high
5 level of psychological harm. There is no medical report and no diagnosed mental health
6 condition. It is said that there is some psychological harm that falls short of significant harm.

7
8 **THE SENTENCE**

- 9
10 69. As the authorities make clear, each case must be considered based on its own facts and a
11 mechanistic approach is not appropriate.

- 12
13 70. Defence Counsel's primary submission is that based on a reading of the authorities, as the
14 murders are not separated in time, the fact of a double murder cannot place the offending within
15 the category of a whole life sentence. I express some difficulty in accepting this submission. I do
16 not think that this is necessarily a strict requirement. It is noted that William Davis LJ in the case
17 of *Kurundi* expressed the view that the ordinary and natural meaning of the words in the Schedule
18 do not necessarily exclude the man who plans to kill a number of people all at once.

- 19
20 71. The point and submission that I do accept is that the statutory requirement is that each murder
21 separately must be proven to involve a substantial degree of premeditation or planning. The
22 English authorities state that the evidence as to this must be clear and unequivocal. A border line
23 case is insufficient.

- 24
25 72. While there is clear evidence in this case of some significant planning in particular the acquisition
26 or possession of firearms which were taken to the scene and of the co-ordinated movement and
27 switching of vehicles before and after the incidents, there is limited evidence beyond this.

- 28
29 73. The evidence led by the prosecution in this case did not include evidence of any background
30 details. There is no evidence of the months, weeks or days leading up to the incident. There is
31 no evidence as to the length of time over which there was premeditation or the length of time
32 over which there was planning or of how much effort was expended in the planning.



- 1 74. From the evidence before the Court, it would be difficult to conclude with the required high
2 threshold of clarity that the planning of one much less both murders involved a substantial degree
3 of premeditation or planning.
- 4
- 5 75. There is no evidence that the murders involved the abduction of a victim or sexual or sadistic
6 conduct. The defendant was not previously convicted of murder.
- 7
- 8 76. All of this means that on the available evidence the statutory requirements for the imposition of
9 a whole life term have not been met.
- 10
- 11 77. The starting point is therefore a minimum term of 30 years.
- 12
- 13 78. The Court then turns to consider whether there are extenuating or aggravating circumstances
14 which are exceptional in nature by reason of which the Court should impose a lower or longer
15 period of incarceration than the minimum term.
- 16
- 17 79. In doing so, the overall circumstances of the case are relevant. There are plainly aggravating
18 circumstances which are exceptional in nature. These include the following.
- 19
- 20 80. Two persons were shot and killed and there was the attempted killing of a third. The breadth and
21 scope of the offending in this case is truly exceptional.
- 22
- 23 81. The offending involved a significant degree of planning or premeditation. This is evidenced by
24 the coordinated movements of cars to and from the rendezvous location in the vicinity of Watlers
25 Road and to the scene and the taking of at least three lethal barreled weapons to the scene. The
26 wearing of masks, the amount of ammunition which was available for discharge at the scene also
27 shows the significant level of preparation and premeditation.
- 28
- 29 82. The scene was an open area outside a bar at night in Central George Town. This is an area to
30 which members of the public, patrons and passersby alike would have access. The fact that there
31 may not have been many people around at the specific time does not detract from this. It is the
32 risk involved. It is not extreme to describe what next happened as a hail of bullets at the victims
33 in the course of a public execution of the most serious kind. The ballistics evidence is that some



1 thirty-one shots were fired from three different firearms. The pre-possession and use of firearms
2 in this way is an aggravating factor which is exceptional in nature. This kind of activity cannot
3 be tolerated in a modern and peaceful society.

4
5 83. The aggravating factors serve to increase the minimum term by 6 years to one of 36 years.

6
7 84. Consideration has been given to the previous convictions of the defendant. He has no previous
8 convictions for firearms or for significant violence. In the Court's view, given the nature of his
9 previous convictions they are not such as would serve to aggravate this offending, and they are
10 not treated as such.

11
12 85. Are there extenuating circumstances which are exceptional in nature? The authorities make clear
13 that personal circumstances are of limited weight in serious cases such as this. Defence Counsel
14 has drawn to the Court's attention the defendant's circumstances, all of which the Court has
15 considered and taken into account. In the main they are not exceptional in nature. There is
16 however one aspect which is set out in the SIR which appears to be of sufficient weight to be
17 considered exceptional in nature. By reason thereof the minimum term is reduced by one year to
18 35 years.

19
20 86. The sentence is therefore life imprisonment with a minimum term of 35 years.

21
22 87. The defendant was arrested on the 28th October 2022. Between then and today he has been in
23 custody for 801 days. This number of days is to be deducted from the minimum term.

24
25 88. For the offence of Attempted Murder, the culpability is at level one because of the use of a lethal
26 weapon brought to the scene. It is accepted that there is no evidence of serious and long-term
27 physical or psychological harm. There is evidence of some physical harm and from the recent
28 VIS, some psychological harm. The starting point is 20 years custody. The range of sentence is
29 17 to 25 years.

30
31 89. From the starting point, there are a number of aggravating factors. These include the location of
32 the offending being a public place, the use of an illegal firearm, attempts to dispose of or conceal
33 evidence namely clothing and phone. The sentence is thereby increased to one of 23 years

1 imprisonment. Mitigating factors, namely the personal circumstances of the defendant as outlined
2 by his Counsel and in the SIR serve to reduce the sentence to one of 22 years imprisonment.

3
4 90. For the offence of Possession of an Unlicensed Firearm, the Court considers the principles in the
5 case of *R v. Avis*⁹, The English Court of Appeal stated therein that the appropriate level of
6 sentence for a firearm offence will depend on all the facts and circumstances relevant to the
7 offence and the offender. It will usually be appropriate for the sentencing court to ask itself a
8 series of questions: -

9
10 i. What sort of weapon is involved?

11 Genuine firearms are more dangerous than imitation firearms. Loaded firearms are
12 more dangerous than unloaded firearms. Unloaded firearms for which ammunition
13 is available are more dangerous than firearms for which no ammunition is
14 available. Possession of a firearm which has no lawful use such as a sawn off shot
15 gun will be viewed even more seriously than possession of a firearm which is
16 capable of lawful use.

17 ii. What if any use has been made of the firearm?

18 iii. With what intention, if any, did the defendant possess or use the firearm?

19 iv. What is the defendant's record?

20 The seriousness of any firearms offence is inevitably increased if the offender has
21 an established record of committing firearm offences or crimes of violence.

22
23 91. In this case this was possession of a genuine firearm which was used to effect murders and
24 attempted murders. The defendant possessed the firearm with the intent to kill. The defendant has
25 no previous convictions in relation to firearms.



⁹ 1998 1 Cr. App. R. 420

1 92. This Court notes that in the *2002 Statement on Tariffs and Guidelines for Sentencing for*
2 *Certain Offences*, the Chief Justice stated: -

3
4 *“As regards to firearm offences contrary to the Firearms Law, the Legislation is quite clear*
5 *that the possession or use of any unlicensed lethal barreled firearm is an extremely serious*
6 *offence. Under the Firearms Law, the maximum penalty for possession of an unlicensed*
7 *firearm is 20 years and a fine of \$100,000. The tariff for that offence unless there are very*
8 *mitigating circumstances will be 10 years. If on the other hand aggravating circumstances*
9 *exists exist, for instance, the use of the firearm for the commission of a serious offence, the*
10 *tariff will be in keeping with decided cases and will be significantly higher.”*

11
12 93. From a starting point of 10 years the offending in this case is aggravated by the nature of the use
13 of the firearm. The sentence is increased to one of 13 years. Mitigating factors as above
14 referenced serve to reduce the sentence to one of 12 years imprisonment.

15
16 94. All the offences arise out of a single incident. All the sentences are therefore to run concurrently.

17
18 95. The sentences are thus: -

19
20 Count 1 – Murder - life imprisonment with a minimum of term of 35 years less 801 days
21 of time served.

22
23 Count 2 – Murder - life imprisonment with a minimum of term of 35 years less 801 days
24 of time served.

25
26 Count 3 – Attempted Murder – 22 years imprisonment. Time served is to be deducted.



1 Count 4 - Possession of Unlicensed Firearm – 12 years imprisonment. Time served is to
2 be deducted.

3
4 All sentences are to run concurrently.

5
6 **Dated this the 9th January 2025**

A handwritten signature in blue ink, appearing to be 'Cheryll Richards', written in a cursive style.

7
8 **The Hon. Justice Cheryll Richards KC**
9 **Judge of the Grand Court**