



IN THE CAYMAN ISLANDS COURT OF APPEAL

CRIMINAL APPEALS 15/2021 & 17/2021

IND.105/2019

SC#02555/2019

BETWEEN:

(1) JEREMY RALPH PARCHMAN

(2) SHIMAR JOSE JULIO KELLY

Appellants

- and -

His Majesty the King

Respondent

BEFORE:

The Rt. Hon Sir John Goldring, President
The Rt. Hon Sir Jack Beatson, Justice of Appeal
The Hon Sir Michael Birt, Justice of Appeal

Date of Hearing: 14 September 2022

Appearances: Appellants in person
Mr Scott Wainwright, Office of the DPP for the Respondent

JUDGMENT

Transcript of oral judgment dated 14 September 2022 and Approved for Release 18 January 2023

GOLDRING, PRES.

1. On the 3rd of August 2021, following a trial, the two Applicants were convicted of manslaughter. They were sentenced by the trial judge, Richards J., to seven and a half years' imprisonment. They both seek leave to appeal against sentence.

2. The notices of appeal are dated the 17th and the 24th of August 2021. In spite being repeatedly pressed by the court, there has been no response from the Applicants setting out the grounds. As we have indicated to them, we think it right now to deal with their appeals.
3. Each of these Applicants has a criminal record. As well as for drugs offences, each has a conviction for assault occasioning actual bodily harm, an offence committed jointly by the two of them.
4. At about 2:00 am at Bananas Restaurant and Lounge in Eastern Avenue, George Town, the deceased touched, or made contact with the girlfriend of Kevin Parchman, the Applicant Parchman's brother. The brother responded by punching the deceased, in the face causing him to fall to the ground. He got back to his feet and was assisted out of the club. The Applicants followed, obviously intending to attack him. They did so. They punched him to his upper body, his face, his head and his neck. He fell to the ground. The Applicants left him there and returned to the club. Meanwhile an ambulance was called. The deceased was taken to George Town Hospital, where he was pronounced dead.
5. Medical evidence indicated that the deceased suffered from a pre-existing condition, which led to the thinning of his arterial walls. It made him more susceptible to injury. The pathologist gave as his opinion that the ultimate cause of death was blunt force injury to the left side of the head behind and just below the ear. There was a resultant rotation of the head, a rupture of the vertebral arteries, resulting in a large sub-arachnoid hemorrhage.
6. The judge considered reports produced in respect of both the Applicants. There were also character references speaking well of them. She considered in the case of the Applicant Shimar Kelly a psychiatric report, which indicated he suffers from ADHD.
7. There being no specific guideline for manslaughter in the Cayman Islands, the judge considered the guidelines which apply to England and Wales. In what one is bound to observe is a very long judgment, she analysed different authorities in which, among other

things, so called "*one punch manslaughter*" was considered. It is not necessary in this application for leave to say more than she concluded, having regard to the nature and circumstances of the present events, that "*the culpability of offending was closer to high rather than medium level and certainly above mid-level*". She said that the case fell between categories B and C of the guidelines and took as "*an adjusted starting point*" seven years' imprisonment. (See paragraphs 102 and 3 of her judgment.)

8. She took into account in each Applicant's case four aggravating features, which she set out and which we need not repeat. Those aggravating features increased the sentence, as she concluded, to nine years. Taking into account the mitigations, she reduced the sentences to seven and a half years.
9. In the submissions made by Mr Parchman, and agreed to by Mr Kelly, it is said that the sentences were excessive. There was insufficient consideration, it is submitted, that they did not know the deceased, they did not appreciate that he would die. We take that to be a reference to the deceased's susceptibility. It is said these events took place in the early hours of the morning, they were under the influence of alcohol, and it is not known who inflicted the fatal blow.
10. In our view, the judge was entitled to pass the sentences that she did. None of the matters advanced amounts to serious mitigation. In the final analysis, this was a deliberate and serious attack. It brought the victim to the ground. Albeit the deceased may have been susceptible, the nature of the violence inflicted was greater than that seen in many of the one punch manslaughter cases. That susceptibility is not, in our judgment, a reason to reduce the sentences imposed. The Applicants chose to follow and attack the deceased and must face the consequences.
11. Leave to appeal against sentence is refused.