

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

3
4 **IND NO: 0001/2021**

5
6
7 **REGINA**

8
9 **v.**

10
11 **JASHAWN OWEN ANTHONY JOHNSON**
12
13
14

15 **Appearances:**

**Ms. Candia James-Malcolm and Mr. Greg
Walcolm for the Crown**

**Mr. Courtenay Griffiths Q.C. instructed by
Mr. Dennis Brady of Brady Attorneys**

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20
21 **Before:**

Justice Roger Chapple (Actg.)

22 **Heard:**

30th November 2021 and 6th December 2021
23
24

25 **HEADNOTE**

26 *Criminal Law – Murder – s.181 of the Penal Code – Exceptional Circumstances*
27
28
29

30 **SENTENCE JUDGMENT**





1 1. Jashawn Owen Anthony Johnson. Following a trial by judge alone, you were
2 convicted of murder. It is now my duty to pass sentence upon you for that offence.
3 This sentence judgment should be read in conjunction with my verdict judgment¹,
4 which sets out, in comprehensive detail, the reasons for my conclusions, together
5 with the facts and background to this sad case.

6
7 2. As you know, law permits only one sentence following conviction for murder – and
8 that is a sentence of life imprisonment. That is the sentence which in due course I
9 will pass upon you.

10
11 3. I am required, pursuant to s.14(1) of the **Conditional Release Act** (2019 Revision)
12 to specify the minimum term you must serve in prison before the Conditional
13 Release Board can consider whether you should be released on license into the
14 community. Section 14(1) of the **Conditional Release Act** provides as follows:

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

23
24 (a) *extenuating circumstances, exceptional in nature, in which case*
25 *the court may impose a lower period of incarceration; or*

26
27 (b) *aggravating circumstances, exceptional in nature, in which*
28 *case the court may impose a longer period of incarceration.”*

29
30
31 4. A list of those factors which may amount to extenuating or aggravating
32 circumstances is to be found in Schedule 12 to the **Conditional Release of Prisoners**
33 **Regulations 2016**. As noted in the **Cayman Islands Sentencing Guidelines for**
34 **Violent Offences (June 2021)**, “*this categorisation is not exclusive since it provides*

¹ Dated 3rd May 2021



1 *also for consideration of “any other circumstances which may be considered*
2 *relevant.”*

3
4 5. In considering the minimum term to be specified in this case, I have been assisted
5 by written and oral submissions from both prosecution and defence counsel. I also
6 have the benefit of a Social Inquiry Report (SIR) and a Victim Impact Report (VIR),
7 prepared by the Department for Community Rehabilitation (DCR).

8
9 6. This is a tragic case from every possible point of view - first and foremost, of course,
10 for the family and friends of the man you killed, Michael Aaron Bush. I respectfully
11 repeat my condolences for the loss suffered by Mr. Bush’s loved ones. The deceased
12 came from a close and loving family. He is described by his family as a good son,
13 kind and considerate.

14
15 7. No sentence I pass can turn back the clock or undo what happened in the early hours
16 of Christmas Eve 2020.

17
18 8. And this is a tragic case from your point of you too. You were only 20 years of age
19 at the time of these events; you are 21 years old now. You had never been in any sort
20 of trouble prior to that time and thus, what you did, can properly be described as out
21 of character.

22
23 9. I readily accept that you did not go out looking for trouble that night. However, as
24 a result of your actions, you have taken the life of another and ruined a good part of
25 your own young life.

26
27 10. I explained in the course of my verdict judgment my factual findings in this case and
28 of course it is upon those findings that I now approach sentence.



1 11. I concluded that the deceased had made unpleasant threats towards you and - I quote
2 - “*was adversely affected by drink and was generally aggressive, belligerent and by*
3 *the end of the evening, if not before, spoiling for a fight.*” An independent witness,
4 Ms Shana Ferguson, whose evidence in large measure I accepted, described Mr Bush
5 as “*drunk, angry and loud.*” Given what others have said about Mr Bush – as noted
6 in the VIR, his behaviour that night was out of character, as was yours.

7
8 12. Needless to say, nothing that Mr Bush said or did that night could begin to justify
9 your subsequent actions. The stark reality is that having been disrespected by Mr
10 Bush, you returned to the car which had brought you to the Strand, armed yourself
11 with a knife and returned to the scene to await a chance to get even, as you saw it, to
12 put right the slight to which you felt you had been subjected. As I said then, the
13 theme of disrespect was one to which you returned several times in the course of
14 your evidence.

15
16 13. Notions of respect and disrespect are at the heart of this case. It is, I am sure, because
17 you considered that you had been disrespected that you engineered a further
18 confrontation with the deceased – when you were armed, and he was not. Your
19 purpose was to demonstrate that you were someone who should be treated with more
20 respect than he had shown you.

21
22 14. I am not sure that you intended to kill your victim; I am sure you intended to cause
23 him really serious harm, at the very latest when you produced the knife.

24
25 15. I state the obvious when I say that such trivial matters as having been slighted are no
26 reason for violence of this or any sort. If only the young would learn that lesson
27 sooner.

28



1 16. I have anxiously considered whether there are extenuating circumstances, within the
2 meaning of s.14(1) of the *Conditional Release Act* which would allow me to depart
3 from the minimum 30-year term provided. The approach to be adopted was set out
4 by the Chief Justice in *R v Anglin*², confirmed by the Cayman Islands Court of
5 Appeal (CICA) in *Ricketts and others v R*³ and is summarised in the *Cayman*
6 *Islands Sentencing Guidelines for Violent Offences*. The Chief Justice explained:

7
8 *“When determining whether the circumstances of a case were exceptional in*
9 *nature so as to justify a minimum term for an offence of murder other than 30*
10 *years:*

- 11 (a) *the first step in a two-stage analysis was to decide whether there*
12 *were circumstances that were exceptional in nature;*
13 (b) *to be “exceptional,” the circumstances had to be unusual or*
14 *uncommon, although they did not need to be unprecedented or*
15 *very rare;*
16 (c) *the assessment should be holistic, taking into account all of the*
17 *circumstances;*
18 (d) *the second step was to decide whether, in light of any*
19 *exceptional circumstances that had been found to exist, a*
20 *minimum term of 30 years would be arbitrary and*
21 *disproportionate;*
22 (e) *the intent behind the legislation, i.e. the protection of the public,*
23 *was to be kept firmly in mind; and*
24 (f) *in the absence of circumstances that were truly exceptional in*
25 *nature, the court had no discretion to depart from the 30-year*
26 *norm.”*

27
28 17. Two of the extenuating circumstances specifically mentioned in Schedule 12 are, in
29 my judgement present in this case, that is to say:

- 30 (a) an intention to cause serious bodily harm rather than to kill; and
31 (d) the fact that the offender was provoked

32
33 18. Here, of course “provoked” is used in its general, rather than its very much more
34 limited legal sense.

35

² [2018] 1 CILR 85

³ [2019] 2 CILR 666



1 19. In the course of my verdict judgment I discussed and rejected the defence of
2 provocation. However, I have already referred to my conclusions about Mr Bush's
3 attitude that evening, which did in fact provoke – in the sense that it was the catalyst
4 for your subsequent actions.

5
6 20. Paragraph 14 of the section dealing with the offence of murder in the *Cayman*
7 *Islands Sentencing Guidelines for Violent Offences* gives guidance which is
8 helpful in this case:

9
10 *“Where the offender is under 21, especially if the offender has no previous*
11 *convictions that are treated as relevant, this may constitute an exceptional factor*
12 *justifying a reduction in the minimum period (depending upon the level of*
13 *maturity of the offender). If so, the reduction is likely to be between 2–4 years*
14 *depending on the other circumstances.”*

15
16 21. Having seen and heard from you in the course of the trial you were, in my judgement,
17 at the time of this offence, an immature and volatile 20-year-old, less able than one
18 with more experience of life to keep in perspective perceived slights and aggressive
19 behaviour towards you.

20
21 22. I remind myself again that my approach should be holistic, *“taking into account all*
22 *of the circumstances”* to *“decide whether, in light of any exceptional circumstances*
23 *that had been found to exist, a minimum term of 30 years would be arbitrary and*
24 *disproportionate.”*

25
26 23. I conclude that the circumstances of this case are exceptional in nature.

27
28 24. I further conclude that a minimum term of 30 years would indeed be arbitrary,
29 disproportionate and too harsh, particularly bearing in mind:

30
31 a. Your age and previous good character

32
33 b. Your relative immaturity, both at the time of this offence and now

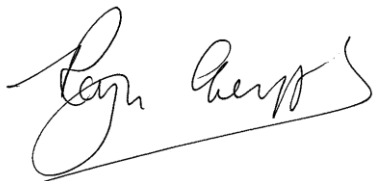
1 c. The earlier behaviour of the deceased towards you which I think provoked you
2 (unreasonably and not so as to afford you any defence to murder) to return to the
3 car, arm yourself with a knife, return to the scene and wait for an opportunity to
4 right the wrong that you perceived had been done to you.

5
6 d. That I cannot be sure that you intended to kill and thus proceed on the basis that
7 it was not; rather, you intended really serious harm. The intention was not a long-
8 standing one. The events that led immediately to his death unfolded rapidly.

9
10 25. In considering all the circumstances of the case, I do not forget that there was some
11 planning and premeditation in your actions, as is evidenced by your return to the car
12 to arm yourself and thereafter waiting for an opportunity for another encounter with
13 Mr Bush. A “significant degree of planning or premeditation” is listed in s14 as a
14 potentially aggravating circumstance. But such planning and premeditation as there
15 was, related, in my judgement, to you wanting to level the score to put right the
16 disrespect shown to you by whatever means presented itself. The degree of planning
17 or premeditation cannot properly be described as significant.

18
19 26. The sentence I pass upon you is one of life imprisonment. The minimum term you
20 must serve before the Conditional Release Board can consider your release from
21 prison back into the community on licence is 24 years. All the time that you have
22 thus far spent in prison shall count towards the serving of that minimum term.

23
24 **Dated this the 11th day of January 2022**

25 

26 **Justice Roger Chapple**
27 **Acting Judge of the Grand Court**