IN THE GRAND COURTOF THE CAYMAN ISLANDS
CRIMINAL DIVISION
INDICTMENT NO. 20/2011

REGINA

V

DEVON ANGLIN

IN OPEN COURT
BEFORE THE HON. ANTHONY SMELLIE, CHIEF JUSTICE
THE 1ST DAY OF FEBRUARY 2018 AND 9TH FEBRUARY 2018

APPEARANCES: Ms. Cheryl Richards QC, Director of Public Prosecution and Ms. Elizabeth Lees, Senior Crown Counsel, for the Crown

Mr. John Ryder QC instructed by Ms. Prathna Bodden Attorney-at-Law of Samson Law, for Devon Anglin.

Conviction for murder – review of mandatory sentence of life imprisonment for setting of minimum period of imprisonment before consideration for release on licence – objectives and principles laid down by the Conditional Release Law 2014 and Conditional Release of Prisoners Regulation 2016 – meaning of aggravating or extenuating circumstances exceptional in nature – standard of proof – application to the facts and circumstances of the case.

JUDGMENT

1. In December 2011, Devon Anglin was tried and convicted for the offence of the murder of Carlo Webster and the attempted murder of Christopher Solomon, by use of an unlawful firearm.

2. He was also tried and convicted for the unlawful possession of that firearm.

3. On 20 January 2012, he was sentenced to the then mandatory sentence of Life Imprisonment for the offence of murder, to 20 years imprisonment for the offence of attempted murder and to 16 years imprisonment for the offence of unlawful possession of the firearm, the sentences to run concurrently.

4. Mr. Anglin appealed to the Court of Appeal. The appeal was dismissed and the conviction and sentences affirmed on 7th December 2012. His further application for leave to appeal finally to the Privy Council was refused.

5. The present matter relates specifically to his sentence for the offence of murder. His case now comes before the Court pursuant to Sections 14 and 23[1] of the Conditional Release Law (2014 Revision) ("the Law") in order that the Court shall specify the minimum period of incarceration he shall serve before he is eligible to be considered for conditional release on licence[2].

6. Under Section 14(1) of the Law, the period to be specified will be such as the Court –

> *"...considers appropriate to satisfy requirements of retribution, deterrence and rehabilitation, but for (the offence of) murder the period shall be thirty years before the prisoner is eligible for conditional release unless there are –*
>
> *(a) Extenuating circumstances exceptional in nature, in which case the Court may impose a lower period of incarceration, or*

[1] Which relates specifically to a prisoner like Devon Anglin already serving a life sentence as it provides in subsection (1) that: "*Within twenty-four months after the entry into force of the Law, the Director of Public Prosecutions shall send to the Grand Court the case records of all prisoners serving life sentences, excluding those whose applications for release on licence are pending under section 31A of the Prison Law, 1975, and the Grand Court shall, in exercise of the powers contained in section 14, pronounce in open court a period of incarceration for each prisoner, and in so doing shall exercise the powers specified in section 14 as if it were sentencing an accused who has been convicted.*"

[2] See also in this regard section 7(1) of the Law which states in relevant part that: "*Prisoners shall be eligible for conditional release as follows: (a) prisoners sentenced to imprisonment for life shall be eligible to be considered for conditional release on licence after serving the minimum period of incarceration imposed under section 14(1)*".

> (b) *Aggravating circumstances, exceptional in nature, in which case the court may impose a longer period of incarceration."*

7. In keeping with subsection 14(2), in making a decision under subsection (1)(a) or (b), "*the Court shall state the extenuating or aggravating circumstances as the case may be*".

8. It appears settled that the standard of proof for the finding of an aggravating circumstance exceptional in nature is the criminal standard[3]. This is consistent with the burden and standard of proof generally in all criminal trials and with the fact that such a finding of aggravating circumstance exceptional in nature, could interfere with the statutory minimum period of incarceration of thirty years to the detriment of the prisoner.

9. A standard of proof for the finding of an extenuating circumstance exceptional in nature appears not to have been settled judicially. This question arises now for consideration as a number of factors said to have influenced Mr. Anglin's behavior at the time of the offence, are urged upon the Court to be regarded as sufficiently exceptional in nature as to have extenuated or mitigated his offence. It is said that at the time of the shooting, he and his girlfriend were harassed and provoked by companions of the deceased and by the deceased himself. And further, that in assessing how that harassment and provocation would have affected Mr. Anglin, the Court should have particular regard to his difficult and deprived childhood, including the fact that as an adolescent, he was assaulted and badly injured by a group of assailants. I will return to deal with these factors below.

[3] *R v Davies [2008]* EWCA Crim 1055 where it was held that, if the presence of a particular feature of the murder (such as whether it involved sexual or sadistic conduct, attracting [under the UK scheme] a 30-year rather than a 15-year starting point is in issue, that circumstance must be proved according to the criminal standard); followed in *R v Ramoon and Douglas,* Ind. 53/2015 (unreported), judgment delivered December 19, 2016 and *R v Ricketts* (supra) at [10].

10. On the question of standard of proof, DPP Miss Richards QC expressed the tentative view that it might properly be the same as for aggravating circumstances (that is: the criminal standard) but accepted that she has been unable to identify any definitive judicial pronouncement on the point. She cited the case of *R v Butler*[4] as an example of the approach taken by the Court to the assessment of abstract factors such as jealousy, humiliation, remorse or an alleged episode of hallucination.

11. Mr. Ryder QC submitted that the assessment of whether a factor is an extenuating circumstance exceptional in nature, will of necessary practicality be a matter for the exercise of judicial discretion and judgment. That the Court should take an intuitive approach. The application of a hard and fast criminal standard of proof would be unfair and impracticable. How, for instance, would the Court be able to decide with certainty, that a prisoner's expression of remorse is genuine? Or that his feeling, at the time of the offence, of humiliation and embarrassment was real? Yet abstractions such as these, if shown to be exceptional in nature, may be regarded as extenuating circumstances[5].

12. I agree but would describe what I consider to be the proper approach as follows: in considering how the offender might have been affected by a particular set of circumstances, the Court should be guided by its sense of how he might reasonably be expected to have been affected and to have behaved in response. In keeping with the criminal law as it has developed in other contexts, especially in the context of self-defence[6], the response of the offender must be assessed both subjectively and

[4] Indictment no: 102/2014, Grand Court, Criminal Division, sentence judgment delivered on 6 May 2016, per Malcolm J.
[5] Coming, especially within Schedule 12 section 2(3)(b) of the Regulations under the Law, as will be shown below.
[6] See Blackstone's Criminal Practice 2018 , section A3.59 – A3.60: "The subjective Question: The circumstances as the Accused Believes them to be", citing inter alia, the judgment of the Privy Council in Beckford v The Queen [1988] AC 130 and of the House of Lords (as it then was) in DPP v Morgan [1976] AC 182.

objectively, from the point of view of how he would reasonably have regarded or been influenced by the circumstances at play. In order to be accepted as extenuating or mitigating his behaviour, the circumstances must be exceptional in nature.

13. This is the approach, although not articulated in those terms, which, in agreement with Madam DPP, I discern to have been taken in *R v Butler*[7].

14. At the time of sentencing of Mr. Anglin, a sentence of life imprisonment was the whole life term mandated by the Penal Code without consideration of the individual circumstances of the offence or of the offender.

15. That approach to sentencing for offences of murder had come to be regarded by the courts as an abrogation of fundamental rights and as inhuman or degrading punishment because of its arbitrary, uncertain and indeterminate nature. See *Stafford v United Kingdom* (2002) 35 EHRR 22 and *R (Anderson) v Secretary of State for the Home Department* [2003] 1 AC 837. *In Vintner & Others v UK*[8] it was decided that while a prisoner convicted of murder has no entitlement to be released at any time, in order for his sentence to be compatible with Article 3 of the European Convention on Human Rights[9], there must be a provision for the possibility of review and release.

16. And so, while the Law deals with conditional release of all prisoners, section 14 of the Law is the Cayman Islands' legislative response relating to Life Imprisonment, by way of its requirement that determinate minimum terms of imprisonment be fixed for prisoners serving life sentences.

[7] Supra.

[8] [2013] ECHR 645, cited by Henderson J in *R v Ricketts* (supra) [2].

[9] And hence section 3 of the Cayman Islands Constitutional Bill of Rights.

17. As already mentioned, this hearing conducted in respect of Mr. Anglin is for the purpose of fixing the minimum term of imprisonment he shall serve before being entitled to be considered for release on licence.

18. The starting point or "*norm*" (the term preferred by Henderson J in *R v Ricke*tts at [23][10]) set by the statute is 30 years. That is, therefore, the statutory expression of Parliamentary intention as to what the mandatory minimum sentence should be. However, as has been settled in the local cases, first in *R v Butler*[11]; if the court finds there to be an aggravating or extenuating circumstance exceptional in nature, it would then adjust the minimum term of incarceration up or down, depending on the weight it gives to the circumstance or circumstances.

19. *However, as Henderson J. also noted in R v Ricket*ts [23]:

> *"From time to time the UK Courts have warned that the phrase 'exceptional circumstances' should not be given so broad a construction as to dictate or remove the [Parliamentary intended] deterrent effect assumed to arise from mandatory minimum sentences and terms. Such provisions are measures for the reduction of crime and represent a reasoned policy choice of Parliament. The intent of Parliament will be frustrated if sentencing judges are moved by sympathy to avoid their statutory duty. In this respect see Attorney General's Reference (No. 115 of 2018): Attorney General's Reform (No. 23 of 2009 [2009] EWCA Crim 1683 and Offen and Others [2001] 2 Cr. App. Rep (S) 10 (CA)."*

[10] For the good reason that unlike in the UK where the term "starting point" is used in reference to different tariffs of whole life, 30 years, 20 years and 15 years imprisonment, variable up or down by the Courts depending on the seriousness of the circumstances of the offence.
[11] Supra [15]

20. As Henderson J. had earlier noted in *Regina v Chad Anglin*[12], it is important to bear in mind that the minimum term fixes the earliest date at which an offender may apply for release but says nothing about whether he should be released on that date, at a later date, or not at all.

21. Indeed, those other considerations are matters for the Conditional Release Board ("the Board") under section 14(3) and (4) of the Law.

22. The application of the Law has been the subject of comprehensive consideration by judges of this Court in a number of further judgments[13]. I will therefore have the benefit in this judgment, of being able to apply relevant principles as stated from several earlier judgments.

23. It is necessary, however, that further parts of the statutory framework are repeated by me here.

24. Section 21 of the Law provides:

> *"The Cabinet may make regulations prescribing all matters that are required or permitted by this Law to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Law".*

25. In accordance with Section 21, the Conditional Release of Prisoners Regulations 2016 ("the Regulations") were promulgated and Section 14 of that Regulation provides that:

[12] Grand Court Indictment 79/2013, Judgment delivered 19 December 2016.

[13]. See R v Trevino Bodden, indictment 91A/2006, judgment delivered 12 May 2017; Regina v Chakane Scott, indictment 79/2011, judgment delivered 7 April 2017.

"For the purposes of determining the earliest possible conditional release date in relation to the prisoner on a term of imprisonment for life, the circumstances set out in Schedule 12 shall be considered."

26. As Malcolm J. noted in *R v Butler*[14], it is clear that that the Regulations intend that a sentencing court should take them into account if they apply to the particular facts of the case. As several provisions are argued to apply to the facts of this case, it is convenient to set out the first two paragraphs (and the already contextualized "Introduction") of Schedule 12 of the Regulations as follows:

"Introduction

1. (1) Where a mandatory life sentence for murder is prescribed by any Law, for the purposes of section 14 of the Law the aggravating and extenuating circumstances are outlined in this schedule.

(2) For offences other than murder, for the purposes of section 14 of the Law, the aggravating and extenuating circumstances may include all the relevant circumstances of the offence and or the offender.

(3) For murder, the period shall be thirty years before the prisoner is eligible for conditional release 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.

Aggravating circumstances and extenuating circumstances

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;

[14] Supra. [11].

(c) mental or physical suffering inflicted on the victim before death;
(d) the abuse of a position of trust;
(e) the use of duress or threats against another person to facilitate the commission of the offence;
(f) the fact that the victim was providing a public service or performing a public duty
(g) concealment, destruction or dismemberment of the body;
(h) previous convictions;
(i) abduction and sexual or sadistic conduct; and
(j) any other circumstances which may be considered relevant."

(3)Extenuating circumstances that may be relevant to the offence of murder include –
(a) an intention to cause serious bodily harm rather than to kill;
(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;
(f) a belief by the offender that the murder was an act of mercy;
(g) the age of the offender; and
(h) any other circumstances which may be considered relevant."

Aggravating or extenuating circumstances, exceptional in nature

27. As to the meaning of circumstances "*exceptional in nature*" in *R v Ricketts*, Henderson J. adopted the following dicta form *R v Kelly*, per Lord Bingham[15]:

> *"We must construe "exceptional" as an ordinary familiar English adjective and not as a term of art. It describes a circumstance which is such as to form an exception, which is out of the ordinary course, or unusual, or special or uncommon. To be exceptional a*

[15] In agreement with Quin J in *R v Ramoon and Douglas.(supra) and as applied also by the Court of Appeal in a different context in R v Scott & Fine 2007 CILR 175.*

circumstance need not be unique, or unprecedented, or very rare; but it cannot be one that is regularly or routinely, or normally encountered. To relieve the court of its duty to impose a life sentence under Section 2(2)[16]*, however, circumstances must not only be exceptional but such as, in the opinion of the court, justify it in not imposing a life sentence [(here the 30 year minimum term)] and in forming that opinion the court must have regard to the purpose of Parliament in enacting the Section…."*

28. Henderson J. also referred to and adopted the approach taken to the "exceptional circumstances" test by the Court of Appeal in *Brown v Regina* 2009 CILR 246,(applying *Regina v Rehman (Zakir)*[2005] EWCA Crim 2056), in that case as a basis for departing from a mandatory minimum term of 10 years imprisonment. The Court of Appeal decided that the effect of the phrase in the context was *"not to give a court an unfettered discretion to impose a* sentence of less than 10 years whenever it thinks fit" but that (applying *R v Rehman (Zakir)* the circumstances are exceptional if the mandatory minimum "*would result in an arbitrary and disproportionate sentence*".

29. This all led Henderson J. to conclude at [21]:

"I consider the "arbitrary disproportionate" formulation to apply equally to the setting of a minimum term. Assessment of whether the circumstances taken as a whole, are exceptional is the first part of the analysis. If they are not, the 30 year minimum term must be imposed. If they are exceptional, the second stage requires an assessment of whether, in light of the exceptional circumstances that have been

[16] In the UK in respect of repeat offenders under Section 2 of the UK Crime (Sentences) Act 1997.

found to exist, imposition of the 30 year minimum would be arbitrary and disproportionate."

30. Assessment of the second question requires a '*holistic approach*[17]", as indeed will the determination in "*the first part of the analysis*", of whether or not there exist, to the standards of proof or satisfaction discussed above, aggravating or extenuating circumstances of an exceptional nature. In other words, aggravating or extenuating circumstances may not be allowed to affect the decision on the appropriate minimum sentence, unless they are, individually or collectively "*exceptional in nature*."

31. Henderson J. summarized the principles to be drawn from the authorities cited in his judgment in *R v Ricketts*[18] as follows:

> "a. *the first step in a two-stage analysis is to decide whether there are circumstances that are exceptional in nature. (To this I would now add that where an exceptional aggravating circumstance is to be found, that must be to the criminal standard of certainty before it might be applied to increase the tariff above the 30-year norm. The finding of an exceptional extenuating circumstance is a matter for the discretion and judgment of the court, applying, where appropriate, the subjective test as to the effect any factor might reasonably have had upon the behavior of the offender*);

[17] A.G's Reference (No. 51 of 2013) [2013] EWCA Crim 1927 reviewing Rehman (supra); also as cited by Henderson J in R v Ricketts (supra).
[18] Supra [28]

b. *to be exceptional, the circumstances must be unusual or uncommon although they need not be unprecedented or very rare;*

c. *the assessment should be holistic, taking all of the circumstances into account;*

d. *the second step is to decide whether, in light of any exceptional circumstances that are found to exist, a minimum term of 30 years would be arbitrary and disproportionate;*

e. *the intent behind the legislation, which here must be the protection of the pubic, should be kept firmly in mind[19]; and*

f. *in the absence of circumstances that are truly exceptional in nature, the Court has no discretion to depart from the 30 year norm."*

32. Having regard to section 23(1) of the Law, it must also be borne in mind that the Court must assess the circumstances as if it were sentencing an offender who has just been convicted and (in keeping with section 23(4)), evidence of the offender's behavior in prison after the date of the original *sentencing is not admissible.*

33. *It follows, as Henderson J. also noted in R v Ricketts*[20], that when (as here) setting a minimum term for an offender who was sentenced before the inception of the Law, the Court must consider only those matters that were or could have been put before it at the original sentencing; events that occurred afterwards are of no relevance.

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[19] While I agree with this statement of principle, I note that unlike the UK Legislation, the Law at section 14(1) speaks not only of "*retribution*" and "*deterrence*" but also of "*rehabilitation*" as a consideration for the Court in setting the period of imprisonment. This must however, be regarded a consideration for setting the sentence for offences of murder, having regard to the statutory norm of 30 years and the Court's mandate not to depart downward from it, unless there are extenuating circumstances exceptional in nature.

[20] Supra [4].

34. Finally in this context, I note that when undertaking a detailed consideration of aggravating or mitigating features, the relative weight to be accorded to each, or to any particular combination of those features, will vary greatly, depending on the circumstances of the case and, as Schedule 12 paragraph 2(1) of the Regulations indicates, "*detailed consideration*" of aggravating and extenuating circumstances may result in a final minimal term of "*any length*" thus according to the judge a wide discretion[21].

35. It is with the foregoing framework in mind, that I must consider whether there were the aggravating and extenuation circumstances exceptional in nature, respectively proposed by the Crown and the Defence as arising for consideration here.

36. Before so doing however, I set out next in summary form, the proven factual basis of the case against Mr. Anglin, on which he was convicted.

The facts of the case

37. The following summary presented by the Crown was agreed by the Defence to be an accurate summary of the proven facts of the case (with some clarifying interpolations by me).

The Judgment of the Trial Judge

38. The murder took place at the Next Level Night Club, when the defendant shot Carlo Webster at near point blank range to the head and twice to the body after he had fallen, killing him instantly. Christopher Solomon was shot with the bullet entering the side of his torso during the same incident. Webster was the intended victim of the shooting and the Crown relied on the doctrine of transferred malice.

[21] See commentary to this effect at Blackstone's Criminal Practice 2018: section E:8.

39. This tragic and terrifying killing took place in a crowded and dimly lit night club.

40. The issue was identity. The defendant admitted he was present in the night club when the shooting took place but denied that he was the shooter. The Crown relied in particular on the evidence of two anonymous witnesses, witness E and witness B; the forensic video analyst, Mr. Grant Fredericks and supporting evidence.

41. The witness anonymity orders were made by Justice Quin on 31st August 2011. During the course of the trial, a further application to discharge the orders was made, which was refused (written ruling delivered on 14th December 2011).

42. During the trial the Court made a visit to the locus in quo at the Next Level Night Club.

43. The defendant did not give evidence.

44. The evidence of witness B was summarized in the judgment at paragraphs 47 to 83. The witness gave evidence that Devon Anglin was known to him/her for over ten years. Devon Anglin arrived at the Next Level about 5 – 10 minutes after the witness. The witness also saw Carlo Webster at the club. The witness saw a fight between Devon Anglin, Carlo Webster and Chadwick Bodden. The witness said that Devon Anglin punched Chadwick Bodden and kicked him as he fell to the ground. The security guards took Chadwick Bodden out of the club. Chadwick Bodden appeared to be inebriated. Then Carlo Webster punched Devon Anglin in the face. Anglin walked to the male restroom. Webster then also moved towards the male restroom and was intercepted by Ophia (identified during the trial as Devon Anglin's girlfriend). Chelsea Watler, a friend of Ophia's testified to an incident shortly before during which Chadwick Bodden, without any apparent cause, twice spat drink from his cup at Ophia and that this happened in the presence of Devon Anglin. As to the

terrifying event of the shooting the witness said that while Carlo Webster and Ophia Smith were talking in the hallway leading to the restroom "*Devon Anglin walked out of the restroom and took the gun out of his waist, pointed it at Mr. Webster and started shooting*" (paragraph 58). The witness said this happened about two minutes after Devon Anglin had gone to the restroom. When Anglin pulled the gun from his waist there was about five feet between him and Carlo Webster. As the witness heard the first shot, Carlo Webster appeared to grab at his side as he was falling to the ground. Then Anglin fired a second shot. Then, as Webster was on the ground, Witness B said Anglin 'walked up to him, point the gun at him and shot him' (paragraph 63). After that "everyone started running" and Devon Anglin walked towards the exit door. The witness said the firearm was either a 9 millimeter or .22 millimeter. The CCTV footage showed the defendant spent more than 5 minutes inside the restroom immediately before the shooting and Carlo Webster was either inside the restroom as well or at the threshold of the doorway to the restroom.

45. The Court noted that from the examination in chief and cross examination a picture of Witness B emerged, having been present during incidents leading up to the shooting and during the shooting itself and describing a clear view of the fatal shooting of Carlo Webster by the defendant, "*inferentially in a cold-blooded act of retribution for the earlier hostile exchange between them, which the witness also described*" (Paragraph 82).

46. Police Officer Charlery gave evidence that he knew Witness B who had told him what the witness had seen and PC Charlery had encouraged the witness to tell the police and a statement was subsequently obtained from Witness B.

47. The evidence of Witness E is dealt with in the Judgment beginning at paragraph 94. Witness E was also at the Next Level Night Club on the night of the murder. The witness was identified using the CCTV and was contacted by the Police two weeks after the murder. The witness did not know either the defendant Devon Anglin nor the deceased Carlo Webster. The witness saw two altercations, the witness saw the man in the orange coloured shirt (who turned out to be Carlo Webster) punch the man in the striped shirt (who turned out to be Devon Anglin) in the face and he punched back. The first altercation was separated by the security guards and five to eight minutes later another fight broke out in the same area with different persons. After the second fight the witness saw the man with the orange coloured shirt near the male restroom. "*The guy with the striped shirt who was involved in the first fight was in front of him, about 20 centimeters away*", said Witness E. The witness turned and about three seconds later heard a shot. There were up to four shots. People were running. Witness E turned around to face the bathroom and saw the guy with the striped shirt walking out of the club. He had a gun in his hand. He put it in his pants waist and walked out the club. The witness extended his/her hand as if to shield friends from the gun man as he walked by on his way out of the club. The witness saw the guy in the orange shirt on the floor by the bathroom area with blood around him.

48. Mr. Fredericks' evidence is laid out from paragraph 122 of the Judgment. Mr. Fredericks tracked the movements of a number of people as they moved about the Next Level Night Club from approximately 22:20 hours on September 9, 2009 until approximately 01:31 hours on September 10, 2009. These included the defendant Devon Anglin and the deceased Carlo Webster. None of the eleven cameras operating

at the time at the Club covered the area outside the male restrooms where the shooting took place but camera 2 covered inside the restrooms. At 26:12 Anglin is seen moving quickly and appears to be off balance as he appears through the doorway into the restroom. At 1:26:12 Webster immediately follows Anglin into the restroom and another male stands as if preventing Webster from getting at Anglin who moves further into the restroom (at paragraph 148). Anglin then appears to be bent over the face basin in the restroom washing his face. Webster exits the restroom at 1:28:15 and Anglin at 1:29:38. The muzzle flash from the first shot is seen at 1:30:07, some 29 seconds later. Other evidence in the case established that three shots were fired.

49. Arlan Meza Qinterro, a member of the security staff gave evidence of being involved in keeping the peace inside the male restroom just before the shooting. Carlo Webster was in the restroom. Anglin came in and slipped and bumped into Webster. Webster sought to engage Anglin verbally about this but Anglin remained silent and his two companions started to argue with Webster. Anglin appeared to wash his face, bleeding from a little gash he had received over his eye, the witness said this was from Anglin coming into contact with the door as he bumped into Webster on his way into the restroom. The situation started to escalate. Another member of staff came to his assistance and they managed to get Webster to leave. Anglin and his companions followed, the witness then heard the gunshots. He emerged two minutes later and saw the body of the deceased. Therefore the witness attributed the injury over Anglin's eye to an accidental slip rather than to the punch to the face of which witness B spoke but his evidence did confirm that there was a heated exchange between Webster and Devon Anglin and his companions just moments before the shooting outside the

restroom (at 2:15). The images captured by Mr. Fredericks showed the same exchanges.

50. Howard Burke gave evidence that he saw altercations and Devon Anglin was involved. About five minutes afterwards he went to the male restroom and saw an argument involving Carlo Webster and someone else. Anglin was washing blood off his face. As he left the restroom area he heard the shots.

51. PC Horner and PC Groves attended and came across Christopher Solomon outside the premises in a highly intoxicated state. He had blood on him and appeared to be suffering from a gunshot wound. He was handed over at the hospital to a medical unit for treatment. Christopher Solomon attested to knowing nothing about the shooting, nor even to having been in the presence of Carlo Webster at the time of the shooting.

52. Dr. Hyma the pathologist, was able to establish that Carlo Webster had been shot three times, once to the head at near point blank range, once to the left chest and once to the right forearm. The gunshot wound to the head would have resulted in immediate unconsciousness and death.

53. Christopher Solomon was found to have suffered a gunshot wound to the abdomen with one entry wound to the right lower abdomen and no exit wound. The bullet was eventually recovered by further surgery, lodged under the skin of the right buttock, on 23rd September 2009. Mr. Solomon was last seen at the hospital for the gunshot injury on 3rd October 2009 when he was found to be fully recovered.

54. Devon Anglin was arrested on 11th September 2009 and interviewed under caution on 23rd September 2010 but exercised his legal right not to answer questions. He was formally charged in respect of the murder of Carlo Webster on 12th January 2011.

55. The trial judge noted that witnesses B and E impressed him as being truthful. Neither had a reason to be untruthful nor a motive to implicate Devon Anglin. No witness other than Witness B (directly) and Witness E (indirectly) stated that Carlo Webster was involved in a fight with the defendant but at least two other witnesses spoke of hostile exchanges between the two, the state of hostility that the camera in the restroom showed. The Court found there was reliable evidence about the hostilities between the defendant and Carlo Webster. It follows that senseless and unspeakable though the killing was, the only person to whom a known motive is attributable was the defendant Anglin.

56. The Court concluded that the defendant was the man seen by Witness E with a gun which he tucked into the waist of his pants only seconds after the fatal shooting of Carlo Webster. This was only nine seconds after the last recorded shot. The Court was compelled to the conclusion that only a witness who actually saw the shooting could have described it in such detail as witness B did.

Court of Appeal Judgment

57. The Court of Appeal heard the appeal on 3rd and 4th December 2012, the appeal was dismissed on 7th December 2012 and the reasons were released on 19th February 2013.

58. The Court of Appeal noted, as did the trial judge, the crowded state of the Next Level club – that there were around three hundred people in the club at the time of the shooting.

59. The appeal consisted of four grounds, the identification evidence, the witness anonymity orders (the original orders and the refusal to discharge them) and the conviction for attempted murder, which was said to be wrong in law.

60. Having considered the detailed background information about each of the witnesses, seen earlier by Justice Quin and the trial judge, the Court was satisfied that there was nothing in it to indicate that either witness may have had a motive to give false evidence in order to incriminate the Appellant, Devon Anglin.

61. In his judgment the trial judge had considered the inconsistencies in the evidence of witness E who impressed him throughout as seeking to be truthful. Although there were inconsistencies as to some of the events of that evening when it came to the shooting the evidence of witness B was clear. The trial judge had concluded only a witness who actually saw the shooting could have described it in such detail.

62. There was no misdirection in the detailed judgment of the trial judge nor did he fail to have regard to any relevant factor when assessing the quality the evidence. The Court of Appeal were satisfied that he was justified in concluding that the evidence was sufficiently reliable for him to hold to the requisite standard of proof that the appellant fired the shots that killed Carlo Webster and injured Christopher Solomon.

63. In relation to the witness anonymity orders it was apparent from his ruling that Justice Quin took proper account of all relevant matters as required by the legislation and that he followed the guidance of Lord Judge C.J. in *Mayers* when making the original orders. The trial judge, as required by the legislation, kept the question of anonymity under review throughout the trial. The trial Judge asked himself the correct questions and the Court of Appeal had no reason to differ from the conclusion that he reached.

The Court was satisfied that the appellant was able to test the reliability of the witness and that he received a fair trial.

64. Adopting the doctrine of transferred malice it could be said that in relation to Christopher Solomon the *mens rea* and *actus reus* of the offence of attempted murder were both present. The fact that Solomon, who was standing nearby, was an unintended victim of the crime was irrelevant. Therefore the attempted murder conviction was upheld.

Analysis

65. Against that background of the established facts, the Crown urges me to find the following to be aggravating factors exceptional in nature such as to warrant an increased minimum sentence above the 30 year norm:

66. Citing *R v Pile and Rossiter*[22], the fact that the killing was by the bold and terrifying use of a firearm in a public place. That the use of a firearm in a crowded nightclub resulting in the murder of one person and the attempted murder of a second should itself be regarded as an aggravating circumstance exceptional in nature. Having regard to the broad tenor of Schedule 12 (2) paragraph (2) (j) of the Regulations (as set out above), the Crown submits that these are "*other circumstances which may be considered relevant*" to the offence of murder.

67. Devon Anglin has six previous convictions involving illegal drug abuse, failing to surrender to custody and an offence of violence, namely an assault causing bodily harm, for which he was sentenced to six months imprisonment. This offence of assault occurred on 2 January 2007 at Eagle House, within the precincts of the

[22] [2006] 1 Cr. App. R.(S) 131.

Northward Prison. Anglin and three co-defendants were inmates at the time and were jointly charged with assaulting a prison officer who was supervising them. Anglin was released from prison (for that and other offences for which he had been in custody) on 26th March 2009. His offences at the Next Level night club on night of the 26th September 2009, took place less than six months after his release.

68. The Crown refers to Schedule 12 section 2 (2)(h) of the Regulations and submits that this previous conviction for assault is another aggravating circumstance exceptional in nature to be taken into account for an increase in sentence above the statutory norm.

69. Under Schedule 12 section 3(1) of the Regulations the Court is mandated as follows:

> "*In considering the seriousness of an offence committed by an offender who has one or more previous convictions, the court must treat each previous conviction as an aggravating circumstance if (in the case of that conviction) the court considers that it can reasonably be so treated having regard in particular, to*
>
> *(a) the nature of the offence to which the conviction relates and its relevance to the current offence; and*
>
> (b) *the time that has elapsed since the conviction.*[23]"

70. The offence at Eagle House was a serious one, involving as it did the assault and injury of a prison officer on duty within the confines of the prison (and with the wanton display of disregard and disrespect for authority also implicitly involved). But the question here is whether I might regard it as an aggravating circumstance

[23] For the sake of completeness, I note that section 3(2) and (3) go on to provide that any reference in this Schedule 12 to a previous conviction is to be read as a reference to a previous conviction by a court of the Cayman Islands; but that the court may treat a previous conviction by a court outside the Cayman Islands as an aggravating circumstance where the court considers it appropriate to do so.

exceptional in nature, in particular so as to relate it in a relevant way to the offence of murder under consideration. This I find can hardly be the case, for four reasons in particular. First, some 2 years and 9 months had elapsed between that offence and the murder under consideration. Second, because of the obvious relative disparity in seriousness of the offences. Third, having regard but to a lesser extent, to Devon Anglin's relative youthfulness at the time of the offence at Eagle House. Having been born on 22nd January 1986, he was then just turning 21. Fourth, the Eagle House offence having been his first involving violence against the person, by itself could not be regarded as evidence of propensity to violence. While the Eagle House offence may have been an indication of a propensity to violent behavior, I know insufficient about the actual circumstances to be able to make that connection with this later offence of murder. Finding such a connection of propensity may well be unfair and unjustified when all the circumstances of the murder are taken into account, including the factor of provocation at the Next Level night club relied upon by the Defence.

71. For instance, while I am told that the prison officer was punched and kicked, it is unclear what if anything sparked the incident and what part Anglin took in the assault, whether or not he was, again for instance, the ring leader.

72. The Crown also invites me to have regard to a letter dated 17 October 2017 from Ms. Leonides Webster-Williams, the mother of the deceased Carlo Webster.

73. In that letter, Ms. Webster-Williams expresses her own natural feelings of recrimination and a sense of "tremendous" loss being suffered not only by herself but also by her deceased son's two minor children, her grandchildren. She also expresses her continuing belief that Devon Anglin remains a threat to the society. She implores

the Court to impose a highly retributive sentence, and so to reinstate the sentence of life imprisonment imposed at conviction.

74. I have made a record here of Ms. Webster-Williams' letter because in the context of a case such as this, the impact of the crime upon the victims must always be a matter of great concern. The terrible impact of his offence must always be brought home to the offender and the victims and the public have a right to be assured that the real severity of his offence will be reflected in any sentence imposed. As already noted by reference to section 14(1) of the Law, the minimum period of incarceration must be such as to satisfy the requirements of retribution, deterrence and rehabilitation, with these requirements being necessarily relegated by the statutory minimum of 30 years, except only where there are aggravating or extenuating circumstances exceptional in nature.

75. But with all that stated, it is not at all clear under the statutory regime of the Law and Regulations, how the Court might properly at this stage take account of a victim impact statement as an aggravating circumstance exceptional in nature, in order to increase the sentence.

76. One may assume that the Legislature, in setting the normative minimum period of 30 years, would have had regard to the likelihood that relatives, sadly often including minor dependent children, would be deeply impacted by an offence of murder. Otherwise, an obvious circumstance to be expected to have been included in Schedule 12 of the Regulations as an aggravating factor, would be victim impact of that kind.

77. But this is not the approach taken by the Legislature, even while the subject of victim impact has been specifically addressed in the setting of the statutory regime. Section 2 of the Law defines a victim not only as the person harmed or killed but also as

including a spouse, relative or child of that person. It also speaks of Victim Impact Reports, Victim Impact Statements and victim impact representations but all as matters for the Board to take into consideration when considering the later release on licence of an offender[24].

78. This all suggests that the Legislature regards the impact upon victims as a matter for ongoing consideration by the Board at any time when an application for release on licence comes up for consideration, along with of course, considerations reflecting on the rehabilitation of the offender, such as his behavior in prison.

79. This is also of course, only consistent with the fact that in many cases, the real impact upon a victim surviving the deceased, such as a minor child, will be realized and become manifest only sometime after the conviction and sentence of the offender.

80. The foregoing notwithstanding, the Crown has nonetheless submitted that I may and properly should consider the matter of victim impact, as an aggravating factor under Schedule 12 paragraph 2(j) of the regulations and as coming within the category "*any other circumstances that may be considered relevant*". Further, that this would be permissible, even in the absence of a more specific requirement under the Law because victim impact statements are generally to be taken into account for sentencing by virtue of section 53 of the Alternative Sentencing Law (2008 Revision).

81. While this proposition may be sound in Law, it is difficult of application when one bears in mind the requirement that the impact upon the victim must be an aggravating circumstance exceptional in nature. Terribly sad and tragic though the circumstance

[24] As defined respectively in section 2 of the Law and contextualized in section 10 of the Law and in regulation 6 of the Regulations.

here is of two young children having lost their father and a mother her son, it cannot truly be regarded as exceptional in nature. As a consequence of murder, such circumstances are not "*unusual or uncommon*", still less "*unprecedented or rare*". Victim impact is tragically all too often the result.

82. It is again, for this reason therefore, that I must assume that such obvious consequences are to be regarded as being already reflected in the statutory minimum sentence of 30 years imprisonment. Otherwise, in just about every case of this kind, the impact upon victims would have to be regarded as aggravating exceptional in nature, calling for an increase to the 30 year minimum but without any guidance from the Legislature how this should be determined; whether for instance, by regard to whether one or more persons have been impacted or by regard to the process or extent of the impact.

83. In that state of uncertainty as to the intent of the Law, I am obliged, at least in the circumstances of this case, to leave the subject of victim impact for the consideration of the Board whose mandate in this regard is clearly recognized by the Law, as I have explained.

84. I now turn to those circumstances relied upon by the Defence as extenuating exceptional in nature.

85. It is submitted that Devon Anglin did not create the situation out of which the terrible incident leading to the fatal shooting of Carlo Webster arose. Indeed, at its inception he attempted to "*brush off*" his first antagonist Chadwick Bodden despite Bodden's persistent attempts to "*cause trouble for him*" and insulting behavior towards his girlfriend, Ophia.

86. Anglin was then further assaulted by Carlo Webster, who also was persistent in his aggression to the extent of pursing him into the restroom until they were separated by the security officers.

87. It is submitted that taken by themselves these would be provocative circumstances and although not rising to the level of the defence of provocation at law, when considered as they would be expected to have affected the offender Anglin, his emotional and psychological condition should be taken into account. It is submitted that whilst Devon Anglin's response was evidently grotesquely disproportionate, the conduct of Chadwick Bodden and Carlo Webster was provocative within the meaning of Schedule 12 section 2 (3)(b) of the Regulations which lists provocation as a potentially extenuating circumstance available to offenders convicted of murder.

88. As regards his "*emotional and psychological condition*", when Devon Anglin was 18 or 19 years old he suffered an attack by a number of men armed with a machete, a knife and a champagne bottle (in the environs of another night club following an altercation inside that club). The machete inflicted wounds to his head and arm, he was stabbed seven times with the knife to his back and head and was struck on the head with the bottle flung by one of his attackers as he tried to run away from the attack.

89. Regardless of medical opinion submits Mr. Ryder QC, such an event would inevitably influence an individual's experience of subsequent incidents of violence such as the threats and blows Anglin is shown by the evidence to have sustained at the Next Level Night club before the fatal shooting.

90. In the event says Mr. Ryder, medical opinion confirms that Devon Anglin suffers from Post-Traumatic Stress Disorder (PTSD) and that whilst this diagnosis did not

exist at the time of original sentence, the circumstances contributing to it and which would therefore have affected his behavior at the time of the offence, did exist at the time of the original sentencing. The medical evidence should therefore be taken into account.

91. To be factored into consideration as well, it is submitted that I should take account of Devon Anglin's troubled developmental and family history.

92. It is in these regards that I consider it is now appropriate to consider the psychiatric evaluation of Devon Anglin undertaken in December last year and so nearly six years after the date of his original sentencing. While the report of the evaluation was not available then, the aforementioned issues now raised on Mr. Anglin's behalf, point to the relevance of the report and are issues which certainly were capable of being raised for consideration at the time of sentencing but for the then mandatory term of life imprisonment which rendered such a report irrelevant at the time.

93. It is reported by the psychiatrist Dr. Wade Myers[25], that Devon Anglin's mother was only 14 years old at the time of his birth. His parents were unmarried, his biological father being married to another woman. He first met his father when he was 12 years old. From age 12 or so onward, he spent time with his father only "*now and then*" and was both "*happy and hurt*" about the contact he had with him.

94. His mother was a cocaine addict who only broke her addiction recently with the help of Christianity. He saw her only "*once in a while growing up*", for example when she would bring lunch to school for him. He is reported as having told Dr. Myers that "*I know she loved me but she had a drug problem.*"

[25] In the only medical/psychiatric report provided. Dr. Wade Myers MD, is Professor of Psychiatry at the Warren Alpert Medical School of Brown University. His report follows his psychiatric evaluation of Devon Anglin conducted at HMP Northward on 12 December 2017.

95. His mother's condition being as it was, Devon Anglin was raised by his maternal grandparents in their home. He reports that they were good parents. He was disciplined occasionally by spanking with a belt but denied that there was any history of abuse or neglect.

96. Sadly, it seems Anglin's obvious academic abilities have gone unrealized on account of having been expelled at age 14 for possession and use of ganja at school. He reports that until then his grades were all As and that he was at the top of his class and potentially the valedictorian, when he was expelled. This is perhaps borne out by Dr. Myers' assessment of his intellectual functioning, which he assessed clinically to be in at least the high average range; finding as well that he "*showed insight into his psychological and physical issues and that his judgment is intact*".

97. But more to the point of the exercise at hand, Dr. Myers' report does not accord with the proposition that Devon Anglin suffered from PTSD at the time of his shooting of Carlo Webster such as might have related or attributed his behavior to the identified circumstances of potential provocation.

98. In this regard, Dr. Myers' report sets out in detail his opinions reached with "*reasonable medical certainty*".

99. Under the heading "*Diagnoses at the time of the Event*" he reports the following:

> "*The primary diagnosis for Mr. Anglin at the time of the murder was* ***Antisocial Personality Disorder****. His history reveals a pervasive pattern of disregard for and violation of the rights of others. This maladaptive personality pattern is indicated by: failure to conform to social norms with respect to lawful behaviours as indicated by repeated arrests; impulsivity or failure to plan ahead; irritability and*

aggressiveness; reckless disregard for the safety of others; consistent aggressive actions. Other diagnoses he met at the time of the murder, per his history, were ***Alcohol Use Disorder*** *and* ***Cannabis Use Disorder***'.

100. Dr. Myers continues:

> *"The question of (Devon Anglin) having* ***Post-traumatic Stress Disorder*** *is a less clear issue. He described several traumatic experiences in which he was threatened with serious injury or death. The most severe one, the machete attack, is documented in the medical records. However, to meet criteria for PTSD, the symptoms must cause clinically significant distress or impairment in social, occupational, or other important areas of functioning. Following his traumatic experiences, yet prior to his current incarceration, Mr. Anglin appeared to be living an active life without any clear indications that PTSD symptoms were significantly impairing his functioning. He had a social life, worked regularly [(as a boat attendant on his uncles' boats taking tourists on trips across the North Sound)], and was not receiving mental health care.*
>
> Of *late, there has been a surge of information regarding Mr. Anglin having PTSD.*
>
> *PTSD is a diagnosis that heavily relies on the self-report of the patient. Normally, if a traumatized person is going to develop PTSD (and most people who experience traumatic experiences do not develop PTSD), the condition has an onset soon after the trauma and*

improves over the ensuing months, usually resolving entirely or to a large extent within a few months to years. This is not the case with the description of Mr. Anglin's symptoms, which is clinically atypical. His main trauma, the machete attack, occurred when he was 19. His regular engagement with the prison mental health system began when he was 30 (in 2016), 11 years later.

There is other information that raises doubt about him having PTSD. He reported that he tended to socially isolate himself and was fearful of crowds from PTSD, yet his life prior to the murder and during his current imprisonment do not support this being the case. For instance, he was at a crowded nightclub with about 300 other people when the murder occurred, went out to clubs regularly, and worked on a boat during the day with 60 people on board regularly. In prison he has been attending a class with 15-22 inmates. Moreover, his psychometric testing indicated that he appeared to portray himself in an especially negative or pathological manner, that is to say, he was likely exaggerating or even fabricating his mental illness symptoms...PTSD simply put, is a pathological, irrational fear response to past trauma and is thus a mental disorder... In Mr. Anglin's case, he has a realistic basis to fear for his life [(from the fact that a number of his friends have been killed in an ongoing gang rivalry)], and his ongoing stress symptoms from persistent external threats are understandable. In sum, it is my opinion that Mr. Anglin does not meet the criteria for PTSD."

"Mental State at the time of the Offences on September 10, 2009".

101. Under this heading Dr. Myers goes on to explain why in his opinion, Devon Anglin knew the nature, consequences and wrongfulness of his actions on the night of September 10, 2009, and that he was not suffering from an abnormality of mind that would have substantially impaired his mental responsibility for the murder and other offences at that time. I see no need to set out all the factors for Dr. Myers' finding in this regard, there being ultimately no issue of mental impairment such as to affect the conviction for the offences.

Comparable cases.

102. In his further plea in mitigation, Mr. Ryder QC cites the earlier judgment in *R v Trevino Bodden*[26].

103. Trevino Bodden was convicted of two murders on 6 November 2007. He was 21 years old at the time of the offences. He left a bar in East End, Grand Cayman and became embroiled in a fight with one of the victims, Bernard Scott. There was no reliable evidence about how, or why, the fight began. What was clear was that Bernard Scott prevailed. Bodden was thrown to the ground, punched repeatedly and kneed to the face. He was beaten badly and humiliated.

104. Bodden was heard to say "*don't go nowhere – I am coming back*", then he left the scene. He returned running, some five to six minutes later, still angry with a loaded gun in his hand. At this, Bernard Scott emerged from a nearby residence. Bodden approached Bernard Scott and fired several shots, killing him.

[26] Supra.

105. The second victim Mr. Renold Pearson, had been an innocent bystander observing the incident unfold. As Bodden approached Bernard Scott with the gun, he shouted at Bodden '*don't go in my old lady's yard with the gun.*' And after witnessing the shooting of Bernard Scott, he shouted at Bodden "*what you do my brother*?" and ran towards him.

106. Without hesitation, Bodden replied '*you too pussy hole*" and fired several more shots, killing Renold Pearson.

107. At his trial, Trevino Bodden denied returning to the scene of the fight and killing the two men. He testified that he had gone home and fell asleep. The jury rejected this story. Mr. Justice Henderson had left provocation to the jury on each count of murder. Trevino Bodden's age (at the time 21 years), the circumstances of the fight and especially the presence of witnesses to it, provided a factual foundation for such a finding. The jury also rejected this, implicitly because they found that the period of absence from the scene following the fight and before the killing (some 6 minutes) was sufficient for Trevino Bodden to have regained self-control.

108. On 20 April 2017 a minimum term of imprisonment was determined by Justice Henderson. The killing of Mr. Pearson "*a mere bystander*" was found to be an aggravating circumstance of the most serious kind. Considered in isolation this factor would attract a very large addition to the 30-year term. However, balancing this against the age and background of the offender and the circumstances of the fight, especially the presence of witnesses to it, the learned judge found that Bodden was provoked and that collectively, there were circumstances which were extenuating exceptional in nature. A term of 28 years was imposed.

109. Citing that case, Mr. Ryder submits that whilst the fixing of the appropriate term is an individual process specific to the facts of each case, some measure of parity and proportionality must be achieved between like cases.

110. The offenders Bodden (21) and Anglin (22) were of similar age when the offences were committed. Each was assaulted. Bodden, on the finding of Justice Henderson was humiliated. Anglin, says Mr. Ryder, is equally likely to have been humiliated. He was verbally harangued and assaulted by two separate individuals in a public place in the presence of people known to all parties. The presence of witnesses to the fight in Bodden's case was afforded particular weight by Justice Henderson. Implicit in this was an acknowledgement that young men are often acutely sensitive to disrespect and embarrassment, experiencing it as humiliation.

111. Whilst Anglin murdered one man and injured another, Trevino Bodden intentionally killed two, one of whom was an entirely innocent and otherwise uninvolved bystander.

112. Trevino Bodden had had an opportunity to regain self-control, Devon Anglin had not. He acted in the heat of the moment and whilst he had immediate access to a gun, there was no evidence that he had brought it to the club himself.

113. Parity and proportionality of treatment requires that I also consider at least one other case, *R v Ramoon and Douglas*[27] in which Justice Quin considered that several factors taken collectively, amounted to aggravating circumstances exceptional in nature.

114. In that case it was, however, common ground that there were no extenuating circumstances exceptional in nature to reduce the 30-year norm.

[27] Supra.

115. Justice Quin found that there were several factors, which when considered collectively, amounted to aggravating circumstances that were exceptional in nature. These included the pre-possession and use of an unlawful firearm, a "*significant*" degree of planning, premeditation and laying in wait on the victim; resulting in a killing '*with clinical precision*" and in public, and an unsuccessful attempt to kill a witness to the shooting. Together, these factors resulted in an uplift of four years. A fifth year was added to Mr. Ramoon's minimum term because he had a previous conviction for possession of an imitation firearm.

Conclusion

116. In the present case, the cold and calculated manner of his killing of Carlo Webster was not the consequence of Mr. Anglin's loss of self-control. It was, as found at trial, "a *cold-blooded act of retribution for the earlier hostile exchange*" between Devon Anglin and Carlo Webster. Webster had been removed from the restroom and restrained from any further attempt at approaching Anglin even while Anglin was seen washing his face in the restroom. Some 29 seconds later, armed by this time if not before with the gun, Anglin then calmly and deliberately walked out of the restroom directly to where Webster was standing and shot him at near point blank range. Mr. Anglin then concealed the gun in the waist of his pants, calmly made his way through the crowd and exited the nightclub before running away from the scene. Consistent with that deliberate attitude, he steadfastly denied being the gunman, a further troubling consequence of which is that the gun was never recovered.

117. Coupled with an early plea of guilt, assistance leading to the recovery of the gun could well have amounted to extenuating circumstances.

118. This was not a shooting in the heat of rage but retribution by way of a "*gangland style*" execution, aimed not only at Webster but also at intimidation of his associates and reckless as to whether or not anyone else was hurt.

119. While Mr. Anglin had steadfastly protested his innocence up to trial, his admissions to Dr. Myers as to his reasons for shooting Webster – feelings of betrayal and fear of reprisal – bear out this view of his behavior.

120. Mr. Anglin's self-reported symptoms of PSTD from his earlier traumatic experiences or from his childhood experiences, as explanation for his deadly response against Webster, have been firmly rejected by the psychiatrist. I am satisfied that I too should reject this explanation, for all the sensible reasons given in the psychiatric report.

121. While there may well have been a degree of provocation, neither Carlo Webster nor his fellow protagonist Chadwick Bodden can be said to have clearly prevailed in their exchanges with Anglin. There is no evidence that Anglin was humiliated. Instead, the evidence is that he had clearly prevailed against Chadwick Bodden who was drunk and had retaliated blow for blow in an exchange of punches with Carlo Webster before the security officers intervened. These exchanges involving Anglin, in my view, did not rise to the level of being extenuating exceptional in nature such as would justify an interference with the statutory 30-year minimum.

122. This case is readily distinguishable from Trevino Bodden's case where the Court found that the provocation and humiliation operating on the mind of the offender was of such exceptional nature as to justify overall a reduction from the statutory minimum. In so finding, the Court must have placed great emphasis upon the subjective impact of humiliation upon the behavior of Trevino Bodden, such that the case must be regarded as having turned upon its own peculiar facts. Unlike here, there

appears not to have been a psychological or psychiatric evaluation of the offender or of his behaviour in that case.

123. The circumstances of the murder of Carlo Webster by the use of an unlawful gun in a crowded nightclub are, by any measure, aggravating and exceptional in nature. It would have been a terrifying experience for everyone present. So much so, that key witnesses would not have testified without the protection of anonymity orders. Viewed from the point of view of the public interest in retribution and deterrence these are circumstances which could well ordinarily justify an uplift from the 30-year statutory minimum. However, the Law calls upon the sentencing judge to have regard also to rehabilitation and it is here that I think it appropriate to take account of Mr. Anglin's personal circumstances, such as his relatively young age at the time of the offence and the fraught and provocative circumstances of hostile rivalry in which he seems to have found himself.

124. Having regard also to the requirements of parity and proportionality of sentencing, Mr. Anglin's conduct cannot be said to have risen quite to the level of seriousness displayed by the defendants Ramoon and Douglas. Here it cannot be said that the killing was premeditated and planned and while there was injury to a second person Christopher Solomon by way of transferred malice, that was not as heinous as Ramoon's and Douglas's deliberate attempt to kill an innocent witness.

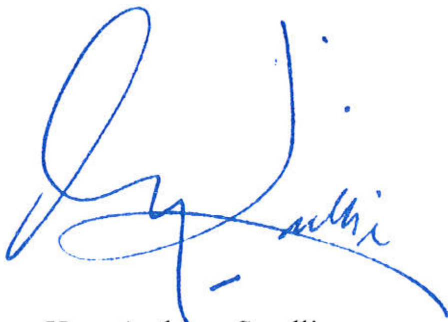
125. Any uplift from the minimum 30-year term here, would therefore have to be somewhat less than the four and five years imposed in the *Ramoon and Douglas* case.

126. An uplift of a year or two could be rationalized. But given the mandate to have regard also to Mr. Anglin's potential for rehabilitation, in my view a mere uplift of a year or two from the 30-year minimum in order to stay proportionately within the

Ramoon and Douglas sentences, would suggest a quality of exactness of sentencing that would not accord with reality.

127. In my judgment after the holistic review of all the circumstances, there is no compelling reason to interfere with the statutory minimum of 30 years in this case. I therefore confirm that to be the minimum period to be served by Mr. Anglin before he is eligible for consideration for release on licence.

128. The days spent in custody awaiting trial and original sentence – 387 days, are to be taken into account.



Hon. Anthony Smellie
Chief Justice

February 9, 2018