

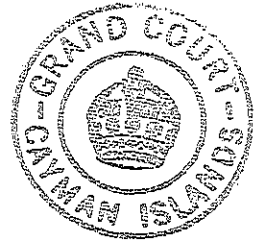
1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE
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INDICTMENT NO: #0102/2014

6
7 THE QUEEN

8
9 V

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11 TAMARA OLITA BUTLER
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14



15 **Appearances:**

Mme. Cheryll Richards Q.C., DPP, and Ms.
Nicole Petit (and Ms. Candia James) for the
Crown

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18
19 Mr. Trevor Burke Q.C. and Mr. Laurence
20 Aiolfi of Samson & McGrath for the Defendant

21 **Before:**

Mr. Justice Alastair Malcolm Q.C. (Actg.)

22 **Trial Dates:**

23 8th March to 12th March 2016 (dates inclusive)
and the 14th March 2016

24 **Verdict:**

25 22nd March 2016

26 **SENTENCE JUDGMENT**
27

- 28 1. On the 15th February 2016 the Conditional Release Law 2014 ("the Law") came into
29 force and, before dealing with the facts of this case, I will deal shortly with the
30 principles laid down by that law.
- 31 2. The Law deals with the conditional release of all prisoners, but the provisions relating
32 to sentences of Life Imprisonment are set out in Section 14 of the Law.
- 33 3. The relevant section states:-

1 14. (1) Notwithstanding any other Law to the contrary, when sentencing a
2 prisoner to a term of imprisonment for life, the court shall specify
3 the period of incarceration the prisoner shall serve before the
4 prisoner is eligible to be considered for conditional release on
5 licence, the period being such as the court considers appropriate
6 to satisfy requirements of retribution, deterrence and
7 rehabilitation, but for murder, the period shall be thirty years
8 before the prisoner is eligible for conditional release unless there
9 are -

10 (a) extenuating circumstances, exceptional in nature, in which
11 case the court may impose a lower period of
12 incarceration; or

13 (b) aggravating circumstances, exceptional in nature, in
14 which case the court may impose a longer period of
15 incarceration.

16 (2) In making a decision under subsection (1)(a) or (b), the court shall
17 state the extenuating circumstances or the aggravating
18 circumstances, as the case may be.
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20 4. Section 21 of the Law provides:

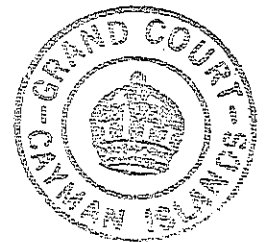
21 *“The Cabinet may make regulations prescribing all matters that are required or*
22 *permitted by this Law to be prescribed, or are necessary or convenient to be*
23 *prescribed for giving effect to the purposes of this Law.”*
24

25 5. In accordance with s.21, on the 9th February 2016 the Cabinet made The Conditional
26 Release of Prisoners Regulations 2016 (the Regulations).

27
28 6. Regulation 14 provides:

29 *“For the purposes of determining the earliest possible conditional release date in*
30 *relation to a prisoner on a term of imprisonment for life, the circumstances set out*
31 *in Schedule 12 shall be considered.”*
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35 7. In the circumstances it is necessary to set out the first two paragraphs of Schedule 12
36 of the Regulations (the Schedule) in full as follows:
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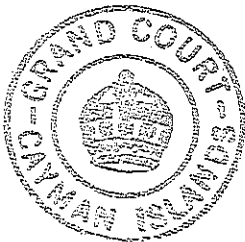
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“Introduction

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;*
 - (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.”*



1 8. Section 14 (1) of the Law requires the court that sentences a person to imprisonment
2 for life to fix a period of incarceration that satisfies the requirements of retribution,
3 deterrence and rehabilitation. In the case of murder that period shall be 30 years unless
4 there are extenuating or aggravating circumstances *exceptional in nature*¹. If there are
5 such circumstances, the Court is permitted to fix a shorter or longer period.

6
7 9. In paragraph 1(1) of Schedule 12 to the Regulations it states that for a mandatory life
8 sentence for murder, for the purposes of Section 14 of the Law, the aggravating and
9 extenuating circumstances are outlined in the Schedule. However in paragraph 1(3) of
10 the Schedule the expression *exceptional in nature* is again used to describe the
11 extenuating or aggravating circumstances.

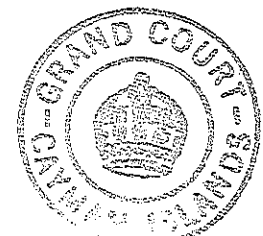
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13 10. If the Schedule stopped there, then the sentencing court would have to make a
14 judgment as to whether any circumstance was exceptional and whether it is exceptional
15 generally or for the particular type of murder.

16
17 11. However paragraph 2 of the Schedule sets out the circumstances that may be relevant
18 when considering the term of incarceration for murder. It is clear the Regulations
19 intend a sentencing court should take them into account if they apply to the particular
20 case.

21
22 12. The circumstances set out include at 2(2)(a) "*a significant degree of planning or*
23 *premeditation*" and at 2(2)(f) the fact that the victim was providing a public service or
24 performing a public duty.

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¹ (my emphasis)

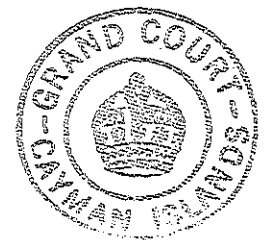


1 13. It is difficult to understand how a court could ever find either of those circumstances
2 exceptional in nature. Either there was premeditation and the victim was providing a
3 public service or there was no premeditation and the victim was not providing a public
4 service. Similarly when considering the circumstances in paragraph 2(3) for example at
5 (a) either there was an intention to cause serious bodily harm rather than to kill or there
6 was not. The description of exceptional in nature cannot apply.

7
8 14. Where the description might apply is to paragraphs 2(2)(j) and 2(3)(h) namely "*any
9 other circumstances which may be considered relevant*".

10
11 15. Miss Richards QC and Mr Aiolfi have both submitted that I should consider all of the
12 circumstances set out in paragraph 2 of the Schedule and if I find any present I should
13 adjust the minimum term of incarceration up or down, depending on the weight I give
14 them. In effect, the same exercise is carried out in England and Wales but with a
15 starting point of 30 years rather than the variable starting point of 15 years to whole
16 life. I now turn to this case.

17
18 16. During the night of the 26th /27th October 2014 when you were alone at home with your
19 6-year-old daughter, Bethany, you killed her. It was a horrific killing. You used at least
20 two knives and inflicted wounds all over her body. The pathologist listed 35 wounds to
21 her head back and chest and reported an extensive number of superficial incised and
22 stab wounds throughout her abdomen.

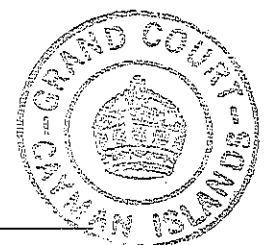


1 17. The forensic examination of the house showed that the killing took place in the master
2 bedroom. There was extensive blood from Bethany on the bedroom floor and 7 of her
3 footprints were identified in that blood. Clearly she was moving about trying to escape
4 your attack when she was already severely wounded. The terror and agony that she
5 experienced being attacked in that way by her mother is unimaginable.

6
7 18. When your husband had left for work at the George Town police station that evening
8 he had left Bethany in the locked master bedroom, at her request, because you had
9 threatened to shave her head as you had yours. Her father had also left her a phone so
10 that she could ring him if you tried to shave her head. You broke into the bedroom,
11 removed the phone and shaved her hair off before killing her.

12
13 19. It is difficult to comprehend how any mother who by all accounts had a loving
14 relationship with her daughter could act in this way. For the reasons set out in my
15 judgment I was not satisfied, on the balance of probabilities, by the evidence that you
16 were acting under the influence of a voice which you told the psychiatrists was that of
17 God nor that you were suffering from Schizoaffective Disorder (Depressive Type). I
18 preferred the evidence of Dr. Myers that you had a Paranoid Personality Disorder with
19 traits of Narcissistic Personality Disorder.

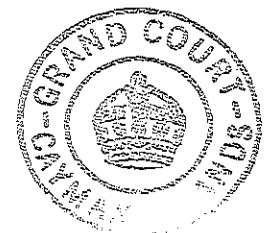
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21 20. No doubt because of your Personality Disorder you have overreacted and made grand
22 gestures. When you erroneously thought your husband had been unfaithful to you, you
23 went into the pulpit and announced it to the whole congregation at your church. When
24 your own affair was terminated by the man, you sent emails to his work colleagues
25 saying you and he had married.



1 21. Dr. Myers' opinion that the packing of all your and Bethany's belongings, and then the
2 shaving of your head, were attempts, or in my words, grand gestures, to get the
3 attention of, and a reaction from, your husband. He did not react in the way you
4 wished. He told you not to shave her head and that Bethany did not want to sleep with
5 you. He then went to work leaving Bethany in a locked bedroom with a phone. Dr.
6 Myers suggests that you then felt utterly rejected, humiliated and furious. Your
7 feelings of anger with your husband were then directed at Bethany particularly, in my
8 view, because she had refused to have her hair shaved and because she had asked to be
9 in a locked bedroom away from you. Dr. Myers says in his opinion you vented your
10 rage on Bethany killing and disfiguring her in a way to exact revenge on your husband
11 because you thought he was unfaithful and did not care about you.

12
13 22. As you know there can be only one sentence for murder and that is imprisonment for
14 Life. However I have to set a period of incarceration that you will serve before you are
15 eligible to be considered for Conditional Release on Licence. The Law says that period
16 shall be 30 years unless there are aggravating or mitigating circumstances such that the
17 period should be longer or shorter.

18
19 23. In my judgment the first aggravating circumstance is your abuse of a position of trust.
20 The Regulations rightly require that I must explain it in ordinary language. Society and
21 every child expect and trust a parent to look after their child and keep them safe.
22 Bethany was in your sole care on that night and, far from keeping her safe, you
23 attacked and killed her. You were in a position of trust and you abused it.

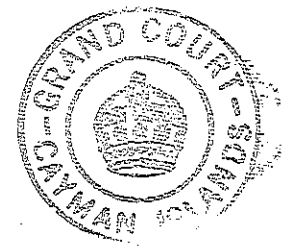


1 24. The second aggravating feature is the mental or physical suffering you inflicted on
2 Bethany before her death. I accept that you had not mistreated Bethany before that
3 night. However on that night you broke into the bedroom, removed her phone, shaved
4 her hair and then attacked her with at least 2 knives while she desperately tried to get
5 away from you. The undoubted mental and physical agony you caused her in your
6 prolonged attack on her is an aggravating circumstance.

7
8 25. The third aggravating feature is that Bethany was particularly vulnerable because she
9 was only 6. Although this is a potential aggravating feature it does not add to the
10 aggravating effect of the previous two and I do not increase the period further because
11 of it.

12
13 26. The fourth aggravating feature is the effect of the loss suffered by your husband as a
14 result of your actions in killing his daughter.

15
16 27. The Crown suggest that there was a significant degree of planning or premeditation. I
17 do not agree. There is no evidence that you intended to kill Bethany before your
18 husband left for work or that there was sufficient premeditation to render it an
19 aggravating circumstance. Miss Richards QC also suggested that there was sufficient
20 concealment of Bethany's body for it to be an aggravating circumstance. Although you
21 had driven away with Bethany's body on the front seat of the car covered by a
22 comforter, you had left your house with the bedroom covered in blood and in my
23 judgment those actions do not amount to an aggravating circumstance.



1 28. Of the extenuating or mitigating circumstances specifically mentioned in the Schedule
2 the only potentially relevant one is the fact that you suffered from a mental disorder or
3 mental disability which (although not amounting to a defence of diminished
4 responsibility)), lowered your degree of culpability. Undoubtedly your Personality
5 Disorder made you suspicious of your husband and made you more likely to overreact
6 and lose your temper with him. The extent to which it lowered your culpability as far
7 your killing of Bethany is concerned is less clear.

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9 29. Mr Aiolfi has urged me additionally to take the following into account as extenuating
10 circumstances so as to reduce the period:

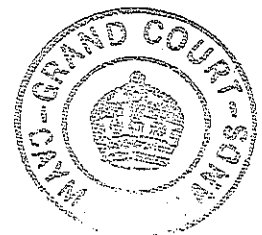
11 (a) Your previous good character;

12
13 (b) The fact that you did not seek to deny that you were responsible for
14 Bethany's death;

15 (c) Your relationship with Bethany
16

17 30. In my judgment I am entitled to take your previous good character coupled with your
18 history of being an excellent mother to Bethany up until that night in October 2014 as
19 an extenuating circumstance.
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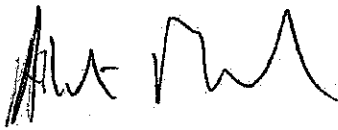
21 31. Given the overwhelming evidence, you could not have seriously suggested that you
22 were not responsible for Bethany's death and I do not accept that it is an extenuating
23 circumstance.
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1 32. The way in which you killed your daughter can properly be described as exceptional in
2 nature and the effect of the two aggravating circumstances increase the period of 30
3 years by 4 years. Your Paranoid Personality Disorder does in my judgment provide
4 some extenuating circumstance and coupled with your good character reduces the
5 period by 6. That is therefore a period of 28 years. From that figure the time you have
6 already been in custody has to be deducted. I am told that as of today that time is 1
7 year and 174 days.

8
9 33. The sentence is therefore Imprisonment for Life with a period of incarceration before
10 you are eligible to be considered for Conditional Release on Licence of 26 years and
11 191 days.

12
13
14 **Dated this the 6th May 2016**

15 

16 **Mr. Justice Alastair Malcolm Q.C.**
17 **Acting Judge of the Grand Court**

