

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE
3

4 INDICTMENT NO: 0053/15
5
6

7 THE QUEEN
8

9 V
10

11 JUSTIN D'ANGELO RAMOON
12 OSBOURNE WILFRED DOUGLAS
13
14



15 **Appearances:**

Mme. Cheryll Richards Q.C. with Ms. Candia
James for the Crown

17
18 Mr. Sean Larkin Q.C. (by Zoom) and Ms.
19 Prathna Bodden instructed by Samson &
20 McGrath for Justin Ramoon
21

22 Mr. Laurence Aiolfi of Samson & McGrath for
23 Osbourne Douglas
24

25 **Before:**

The Hon. Mr. Justice Charles Quin Q.C.

26 **Judge Alone trial:**

19th -29th April 2016

27 **Verdict Judgment:**

26th May 2016

28 **Sentence Hearing:**

20th October 2016

29 **Written Submissions
30 for Defendant Ramoon:**

24th October 2016
31

32 **Delivery of Sentence Judgment:**

19th December 2016
33

34 **HEADNOTE**

35 *Criminal Law – Murder – Conditional Release Law 2014¹ – Provisions for whole*
36 *life sentences – Extenuating or aggravating circumstances, exceptional in nature.*
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¹ Which came into force in February 2016

SENTENCE JUDGMENT

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3 1. Following a trial by Judge Alone, the Defendants were found guilty of murder and
4 possession of an unlicensed firearm on the 26th May 2016.

5 2. Section 182 of the Penal Code provides that any person convicted of murder shall be
6 sentenced to imprisonment for life.

7 3. However, with the introduction of the Conditional Release Law (2014) which came
8 into effect on the 15th February 2016 it is now the law that when sentencing to a term
9 of imprisonment for life the Court shall specify the period of incarceration the prisoner
10 shall serve before the prisoner becomes eligible to be considered for conditional
11 release on licence. Section 14(1) further provides that for murder, the period of
12 incarceration shall be thirty (30) years before the prisoner is eligible for conditional
13 release, unless there are extenuating or aggravating circumstances, exceptional in
14 nature, which may cause the court to impose a lower or a longer period of
15 imprisonment.

16 4. I am grateful to Acting Justice Alastair Malcolm Q.C. for the helpful way in which he
17 has set out, in his sentence judgment, dated the 6th May 2016, in *R v. Tamara Olita*
18 *Butler*², the law which deals with the conditional release of all prisoners and the
19 provisions relating to Life Imprisonment which are addressed in s.14 of the Law. I can
20 do no better than adopt the learned Acting Judge's careful approach.

21 5. The relevant section states:-
22



² Indictment 102 of 2014

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.
19

20 6. 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 7. In accordance with s.21, on the 9th February 2016 the Cabinet made The Conditional
26 Release of Prisoners Regulations 2016 (the Regulations).

27 8. Regulation 14 provides:

28 *“For the purposes of determining the earliest possible conditional release date in*
29 *relation to a prisoner on a term of imprisonment for life, the circumstances set out*
30 *in Schedule 12 shall be considered.”*
31

32 9. In the circumstances it is necessary to set out the first two paragraphs of Schedule 12
33 of the Regulations (the Schedule) in full as follows:
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1 **“Introduction**
2

- 3 1. (1) *Where a mandatory life sentence for murder is prescribed by any*
4 *Law, for the purposes of section 14 of the Law the aggravating and*
5 *extenuating circumstances are outlined in this schedule.*
6 (2) *For offences other than murder, for the purposes of section 14 of*
7 *the Law, the aggravating and extenuating circumstances may include all*
8 *the relevant circumstances of the offence and or the offender.*
9 (3) *For murder, the period shall be thirty years before the prisoner is*
10 *eligible for conditional release unless there are extenuating or*
11 *aggravating circumstances, exceptional in nature, in which case the court*
12 *may impose a shorter or longer period of incarceration respectively;*

13 **Aggravating circumstances and extenuating circumstances**

- 14 2. (1) *Detailed consideration of aggravating or mitigating circumstances*
15 *may result in a minimum term of any length.*
16 (2) *Aggravating circumstances that may be relevant to the offence of*
17 *murder include –*
18 (a) *a significant degree of planning or premeditation;*
19 (b) *the fact that the victim was particularly vulnerable*
20 *because of age or disability;*
21 (c) *mental or physical suffering inflicted on the victim before*
22 *death,*
23 (d) *the abuse of a position of trust;*
24 (e) *the use of duress or threats against another person to*
25 *facilitate the commission of the offence;*
26 (f) *the fact that the victim was providing a public service or*
27 *performing a public duty;*
28 (g) *concealment, destruction or dismemberment of the body;*
29 (h) *previous convictions;*
30 (i) *abduction and sexual or sadistic conduct; and*
31 (j) *any other circumstances which may be considered*
32 *relevant.*
33 (3) *Extenuating circumstances that may be relevant to the offence of*
34 *murder include –*
35 (a) *an intention to cause serious bodily harm rather than to*
36 *kill;*
37 (b) *lack of premeditation;*
38 (c) *the fact that the offender suffered from any mental*
39 *disorder or mental disability which (although not falling*
40 *within section 185(1) of the Penal Code (2013 Revision)),*
41 *lowered the offender’s degree of culpability;*
42 (d) *the fact that the offender was provoked (for example, by*
43 *prolonged stress);*
44 (e) *the fact that the offender acted to any extent in self-*
45 *defence or in fear of violence;*
46 (f) *a belief by the offender that the murder was an act of*
47 *mercy;*
48 (g) *the age of the offender; and*
49 (h) *any other circumstances which may be considered*
50 *relevant.”*
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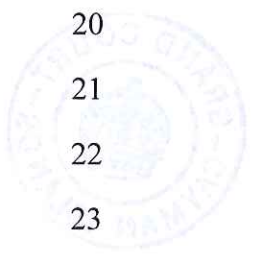
1 10. Section 14 (1) of the Law requires the court that sentences a person to imprisonment
2 for life to fix a period of incarceration that satisfies the requirements of retribution,
3 deterrence and rehabilitation. In the case of murder that period shall be 30 years unless
4 there are extenuating or aggravating circumstances exceptional in nature³. If there are
5 such circumstances, the Court is permitted to fix a shorter or longer period.

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

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

14 13. However paragraph 2 of the Schedule sets out the circumstances that may be relevant
15 when considering the term of incarceration for murder. It is clear the Regulations
16 intend a sentencing court should take them into account if they apply to the particular
17 case. The circumstances set out include at paragraph 2(2)(a) "*a significant degree of*
18 *planning or premeditation.*"

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³ (my emphasis)

1 *SUBMISSIONS ON BEHALF OF THE CROWN*

2 14. The Crown submits that any person convicted of murder shall be sentenced to
3 imprisonment for life.

4 15. The aggravating and extenuating circumstances are outlined in Schedule 12 of the
5 Conditional Release of Prisoners Regulations 2016 at s.2.

6 16. The Crown submits that the aggravating circumstances which appear to exist in the
7 instant case are as follows:

8 i. The attack took place in a crowded public place. This was essentially a public
9 execution;

10 ii. There was some degree of planning and premeditation – i.e.:

11 (a) in the handing over of the firearm;

12 (b) the positioning of the vehicle prior to shooting;

13 (c) the moving of the younger persons from the scene immediately before the
14 shooting;

15 (d) the pre-arranged getaway from Mary Street.

16 iii. Defendant Justin Ramoon has previous convictions which include the following:

17 (a) Possession of an imitation firearm (2010)

18 (b) Possession of ganja with intent to supply (2011)



1 iv. Defendant Osbourne Douglas has previous convictions which include the
2 following:

3 (a) Burglary (2006)

4 (b) Handling stolen goods (2006).

5 17. It is to be noted that s.3 of Schedule 12 provides that each previous conviction must be
6 treated as an aggravating circumstance if the courts consider that it can reasonably be
7 so treated, having regard to the nature of the offence, its relevance to the current
8 offence and to the length of time that has elapsed since the conviction.

9 18. The Crown submits that there appears to be no extenuating circumstances in the instant
10 case.

11 19. In light of the foregoing, the DPP submits that from a starting point of 30 years
12 imprisonment, the Court may wish to consider whether there are any aggravating
13 circumstances which are exceptional in nature such that the sentence of 30 years
14 should be increased.



1 *DEFENCE SUBMISSIONS ON BEHALF OF DEFENDANT RAMOON*

2 *COUNT 1: MURDER*

3 20. The defence submits that it is agreed that the sentence for murder is imprisonment for
4 life⁴ and the Court is required to set a minimum tariff of 30 years' imprisonment when
5 imposing a life sentence⁵ unless exceptional extenuating or aggravating features apply.
6 It is submitted on behalf of both Defendants that there are *no* exceptional extenuating
7 or aggravating features.

8 *COUNT 2: POSSESSION OF AN UNLICENSED FIREARM*

9 21. The submissions made on behalf of Defendant Ramoon are adopted by counsel for
10 Defendant Douglas. The defence submits that it is agreed that s.39 Firearms Law (2008
11 Revision) sets out the minimum term of an offence under s.15(5), that minimum term
12 being ten (10) years' imprisonment if convicted after trial.

13
14 *AGGRAVATING FEATURES*

15 22. The Defence submits that paragraph 1(3) of Schedule 12 requires the aggravating
16 features to be exceptional in nature. This is a different and higher test than Schedule 21
17 of the UK Criminal Justice Act 2003 relied upon by the Crown and submits further that
18 a penal statute or regulation should be interpreted narrowly and in favour of a
19 defendant.
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⁴ S.182 of the Penal Code (2013 Revision)

⁵ Under section 14(1) and (2) of The Conditional Release Law, 2014 (effective from 15 February 2016)



1 23. The defence submits that it is agreed that a sentencing judge should apply the same
2 standard as a jury when deciding aggravating features⁶.

3
4 24. The term 'exceptional' has been considered in relation to penal statutes where a
5 mandatory sentence applies unless the defendants can show exceptional circumstances.

6 In *R v Kelly*⁷, the Court of Appeal found:

7
8 *"We must construe "exceptional" as an ordinary, familiar English adjective, and*
9 *not as a term of art. It describes a circumstance which is such as to form an*
10 *exception, which is out of the ordinary course, or unusual, or special, or*
11 *uncommon. To be exceptional a circumstance need not be unique, or*
12 *unprecedented, or very rare; but it cannot be one that is regularly, or routinely, or*
13 *normally encountered"*⁸.
14
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16 ***PRE-MEDITATION***

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18 25. The defence submits that there is no evidence of pre-meditation and certainly no
19 evidence that could be characterised as exceptional. The Defence submits that the
20 evidence suggests the following:

- 21 i. There was no background hostility between Mr Ramoon and the deceased;
- 22 ii. Mr Ramoon had not gone out that evening to cause violence;
- 23 iii. Mr Ramoon was not armed until moments before the shooting;
- 24 iv. The deceased's attendance at the location was wholly unexpected;
- 25 v. Mr Ramoon was not involved in any confrontation;
- 26 vi. The incident was spontaneous and the reaction equally spontaneous;
- 27 vii. Any intention was formed very late in the events that night.



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⁶ Archbold 5-415
⁷ [2000] 1 QB 198
⁸ [Per Lord Bingham p208C]

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3 *PREVIOUS CONVICTIONS*

4 26. The Defence submits that although the Crown have relied upon Mr Ramoon's previous
5 convictions:

6 i. The matter of possession of a prohibited weapon is of an entirely different
7 character as:

8 (a) a significant period of time has elapsed;

9 (b) the firearm was not working.

10
11 ii. The possession of ganja with intent to supply is of a wholly different character and
12 unrelated to the circumstances of this case.

13
14 27. The Defence submits that neither the possession of the prohibited weapon nor the
15 possession of the ganja are of a character so as to make the previous convictions
16 exceptional and thereby an aggravating feature.

17
18 *CROWDED PLACE*

19 28. The defence submits that this is not a listed aggravating feature. Although such a list is
20 not exhaustive the principal of exceptionality would have to apply to the facts of this
21 case which they do not. Many murders occur in public places.
22



1 *PERSONAL BACKGROUND AND MITIGATION*

2
3 29. Mr Ramoon was raised by his mother who was the sole carer for him, his older brother
4 and his younger sister (now aged 15). He is the father of a son, aged nine months,
5 whose birth he missed as a result of being remanded in custody. His son now resides
6 with the mother who remains a supportive partner to Mr Ramoon. Prior to his
7 incarceration Mr Ramoon was doing his best to provide for his family and was
8 working in landscaping as well as taking on additional work where he could find it
9 such as repairing bikes. He wants to make use of the full resources the prison has to
10 offer whilst he is incarcerated but as he is currently a remand prisoner in the high-risk
11 unit he has limited access to any programmes.

12
13 30. The defence submits further that the prosecution asserts that one previous conviction
14 qualifies as an aggravating circumstance exceptional in nature. The nature of that
15 conviction is not exceptional for convictions of that kind such as to justify an increase
16 in the minimum sentence.

17
18 31. The defence also submits that there are other features for the Court's consideration
19 which are:

- 20
21 i. Mr. Ramoon was aged 19 at the time of the earlier offence;
22 ii. A significant period of time has elapsed since that earlier offence;
23 iii. The matter of possession of a prohibited weapon is of a different character. Had
24 the prosecution wished to bring charges of attempted murder or violence they
25 could have done so, but they chose not to.



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DEFENCE SUBMISSIONS ON BEHALF OF DEFENDANT DOUGLAS

COUNT 1: MURDER

32. Mr. Aiolfi, Counsel for the defendant Douglas, adopts the submissions made by leading counsel for Defendant Ramoon, Sean Larkin Q.C. and further concedes that whilst there are no extenuating circumstances there are no aggravating circumstances exceptional in nature and, therefore, the 30-year period of imprisonment should stand.

ANALYSIS AND CONCLUSION

33. The DPP has helpfully highlighted the Law on this subject pursuant to the Criminal Justice Act 2003 in England and Wales.

34. The UK has four starting points for adult offenders – whole life, 30, 25 and 15 years. Further, it is accepted that adjustments must be made in relation to the starting points under the UK legislation as opposed to the Conditional Release Law, which in our jurisdiction specifies that the Court ‘shall’ impose a minimum term of 30 years unless there are extenuating circumstances or aggravating circumstances which are “*exceptional in nature.*”



1 35. In the UK a whole life order should be imposed where the seriousness of the offending
2 is so exceptionally high that just punishment requires that the offender be kept in
3 prison for the rest of his life. If the case includes one or more of the factors set out in
4 paragraph 4(2) of the Criminal Justice Act 2003, it is likely to be one that calls for a
5 whole life order, but, the Court must consider all the material facts before concluding
6 that a lengthy finite term will not suffice⁹. If the case does not fall within this
7 paragraph but the Court considers that the seriousness of the offence (or the
8 combination of the offence and one or more offences associated with it) is particularly
9 high, and the offender was aged 18 or over when he committed the offence, the
10 appropriate starting point is 30 years¹⁰. Cases would normally fall within this
11 paragraph if they included a murder done for gain (such as a murder done in the course
12 or furtherance of robbery) or a murder involving sexual or sadistic conduct¹¹.

13 36. Paragraph 5-408 of *Archbold* 2016 Ed. deals with the UK 30-year starting point and
14 the use of a firearm, and states that:

15 *“the reason why the seriousness of such an offence is normally considered to be*
16 *particularly high is that it results from the unlawful carrying of a loaded firearm*
17 *and the fact that the usual purpose of carrying such a firearm is to be able to kill*
18 *or to cause really serious injury; it is possible to imagine such circumstances*
19 *where this is not the case, but they will be rare.”*

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⁹ Archbold 5-406, 2016 Ed).

¹⁰ (s.5(2) of Schedule 21 of the Criminal Justice Act 2003).

¹¹ (Archbold 5-426, 2016 Ed).



1 37. In the United Kingdom the standard of proof that the court should apply when deciding
2 whether aggravating factors exist to lift the starting point for the minimum terms from
3 15 years to 30 years is the same standard as that to be applied by the jury when
4 reaching their verdict¹².

5 38. However, the provisions of the UK Criminal Justice Act 2003 and the related English
6 case law are of limited assistance because they do not include the important provision
7 of “*extenuating or aggravating circumstances which are exceptional nature*” – enacted
8 by the Cayman Islands Legislative Assembly in the Conditional Release Law.

9
10 39. The Cayman Islands Grand Court has considered the Conditional Release Law (2014)
11 on one previous occasion, namely in the case of *R v. Tamara Olita Butler*¹³. In that
12 case the learned Malcom J Actg. concluded that the way in which the victim was killed
13 was “*exceptional in nature*” and also that there were two aggravating circumstances
14 which increased the period of 30 years. The period was then decreased in relation to
15 the Paranoid Personality Disorder of the Defendant and her good character.

16
17 40. In this case it is common ground that there are no extenuating circumstances,
18 exceptional in nature, which would justify the Court imposing a period of incarceration
19 below the statutory minimum of 30 years.

20
21 41. I have to decide whether the aggravating circumstances as set out by the DPP are
22 exceptional in nature so that the Court should impose a longer period of incarceration.

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¹² R v. Davies [2009] 1 Cr. App. R.(S) 15, CA.

¹³ Indictment #0102/2014



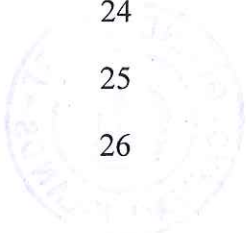
1 42. In summary, on the 6th July 2015 the CCTV footage revealed that the two defendants
2 had spent the evening moving in and out of each other's company, but were never far
3 from the First Defendant's silver Honda Civic – Registration 105 645. Shortly after
4 10:30 p.m. the Defendant Douglas left the Alpha outlet where the Honda Civic was
5 parked and walked over to the Globe Bar. Just one and a half (1 ½) minutes later the
6 Defendant Ramoon drove his Honda Civic from the Alpha outlet to Martin Drive and
7 there he reversed his car into the space opposite the Globe Bar.

8
9 43. The evidence discloses that the Defendant Douglas spent some time in the alcove –
10 clearing the young people away from where the shooting took place. Shortly thereafter
11 the Defendant Douglas gives Defendant Ramoon the illegal firearm and then walks
12 over to the Honda Civic where the Defendant Ramoon had parked it. The Defendant
13 Douglas waits by the Honda Civic while the Defendant Ramoon goes up to his victim
14 and shoots him in the head. The victim was standing in the alcove and had turned his
15 back or side to the Defendant Ramoon to put down his bottle when he was shot. The
16 medical evidence suggests that he would have died instantly.



17
18 44. The Defendant Douglas drove the Defendant's Ramoon's car away from the scene and
19 over to Mary Street. The evidence discloses that immediately after the shooting the
20 Defendant Ramoon tried to shoot a friend of the victim, who was a witness to the
21 killing, but the gun would not fire.

22
23 45. The Defendant Ramoon walks from behind the Globe Bar where he meets up with
24 Defendant Douglas and they drive off into the night. What is of particular significance
25 is that the Honda Civic was at the scene of the murder for less than 10 minutes.



1 46. Having heard all the evidence at the trial I find the following to be aggravating
2 circumstances of an exceptional nature:

- 3
4 i. The pre-possession of the illegal firearm;
5
6 ii. Each defendant had his own distinct role before the shooting, at the time of the
7 shooting and after the shooting, that is:

8 (a) The Defendant Douglas walked ahead of Defendant Ramoon and cleared
9 the alcove of young people;

10 (b) The Defendant Ramoon drove the getaway vehicle to the scene of the
11 murder;

12 (c) The Defendant Douglas provided Defendant Ramoon with the firearm just
13 before the killing;

14 (d) The Defendant Ramoon shot Mr. Powery in the head at point-blank range,
15 killing him instantly;

16 (e) The Defendant Douglas drove the getaway vehicle away from Martin
17 Drive and waited for the Defendant Ramoon in Mary Street;

18 (f) The Defendant Ramoon gets into the car and the Defendant Douglas drives
19 off.

- 20
21 iii. As could be seen from the evidence presented by the Prosecution, there was a very
22 significant degree of planning and premeditation. The murder was carried out in
23 less than 10 minutes with clinical precision. The victim was just standing there
24 drinking a beer and there is no evidence of any provocation by the victim;



1 iv. After killing Justin Powery the Defendant Ramoon walked down the alcove, he
2 looked directly at the murder victim's friend and witness to the murder, Jerome
3 Hurlstone, he raised his gun to shoot at Jerome Hurlstone only to be disturbed by
4 another individual and for the gun to click without firing. Jerome Hurlstone's life
5 was saved by the timely intervention of the third party and the fact that the
6 Defendant's firearm failed to operate a second time.

7 47. It was in fact a very public execution of the most evil nature and it could be accurately
8 described as chillingly clinical in its planning and execution.

9 48. To adopt Lord Bingham's words in *R v. Kelly*¹⁴, it is a public execution which is far
10 from "regular", far from "routine" and far from "normal". Accordingly, in my view,
11 these are aggravating circumstances, exceptional in nature.

12 49. There has been a very serious escalation of gun crime over the past 7 years. People
13 must help the police in their difficult task of finding out who is bringing the illegal
14 guns into the Cayman Islands and who is harbouring the illegal guns. Over the past
15 years too many young Caymanians have lost their lives because of illegal guns and
16 furthermore, too many small business owners have been the targets of terrifying attacks
17 from armed robbers with illegal firearms.

18 50. Under the Conditional Release Law the Court must consider the appropriate period of
19 incarceration to satisfy the requirements of retribution, deterrence and rehabilitation.

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¹⁴ *supra*



1 51. Accordingly, in my view, the aforesaid exceptional aggravating circumstances and the
2 urgent need for meaningful deterrence merit an upward adjustment from the 30 years
3 to 34 years imprisonment for each defendant. In addition, as a result of his previous
4 conviction for possession of an imitation firearm, which is an additional aggravating
5 circumstance, I make a further upward adjustment of one year in relation to Defendant
6 Ramoon and, consequently, he is sentenced to 35 years' imprisonment on Count 1,
7 murder.

8 52. Accordingly, on Count 1, the charge of murder, pursuant to the Conditional Release
9 Law the Defendant Ramoon will serve 35 years' incarceration before he is eligible for
10 conditional release. The Defendant Douglas shall serve 34 years' incarceration before
11 he is eligible for conditional release.

12 53. On Count 2, the charge of Possession of an unlicensed firearm, both defendants are
13 sentenced to ten (10) years' imprisonment – to run concurrent to the aforesaid
14 sentences.

15 54. For both Defendants, time spent in custody – a total of five hundred and twenty-two
16 (522)¹⁵ days – will be deducted from their sentences.

17

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¹⁵ This figure was presented to the Court by the DPP and Defence confirmed its agreement that this is the total number of days spent in custody from the date the defendants were first arrested up to today's date.

1 55. I note that the firearm used by these Defendants to kill Jason Powery has never been
2 recovered and, therefore, I urge those who know anything about its existence to
3 provide any relevant information to the police forthwith.

4

5

6 **Dated this the 19th December 2016**

7



8 **Honourable Mr. Justice Charles Quin Q.C.**
9 **Judge of the Grand Court**

