

REGINA
V
LEONARDO FORBES

N Skippings for the defendant/applicant
E Hinds and L Franklyn for the Crown

Sentence

[1] Leonardo Forbes was charged, jointly with his elder brother, with the murder of Roger Delaney and attempted murder of Danny Delaney. They were convicted by a jury and sentenced on 21 March 2001. This applicant was seventeen years old at the time of the offences and was sentenced to be detained **during** Her Majesty's pleasure for the murder and to, of t: years imprisonment for the attempted murder.

[2] The evidence = described a vicious and sustained attack by the two defendants on their unarmed victims. The applicant used an ice pick and his brother a knife. The deceased received four wounds to his back which were inflicted with the ice pick *and* one to his chest inflicted with the knife. All the wounds on the other victim, Danny DeJapcy, appeared to have been inflicted with the knife. This applicant fought with the deceased and, who the deceased ran, pursued him. The victim fell giving the applicant the opportunity to attack him again in the course of which he **was** joined and assisted by his brother. They then left their victim and pursued Danny who also fell. He, too, was then attacked by both defendants. When one of the wounded man shouted for someone to bring his truck to get away, one of the defendants punctured two of the tyres rendering it undriveable.

[3] It is clear that this applicant was armed in advance and had been threatening to attack the victim. He told one witness that he would stab someone bothering him "until the mall out". He boasted before this incident that he was always "equipped". Whether or not he was influenced by his older brother, he undoubtedly took a full and aggressive part throughout

[4] In August 2001, appeals by both defendants against conviction and sentence were dismissed.

[5] In April 2004 the Parole Board refused an application by this applicant for release on licence but, in July, the Governor ordered his release on licence. *The* necessary documentation was drawn up but, **later** **the** same month, the **G**overnor revoked his earlier decision.

[6] The precise nature of the Governor's order was subject to some challenge **and an** application for judicial review was filed and leave granted by Martin AC.3 in November 2004. The relief sought was refused by Gardner CJ in July 2005. An appeal against that decision was dismissed. The Court did, however, direct that the order that he be detained "during Her Majesty's pleasure" should be altered to "during the Court's pleasure" and referred the case to the Supreme Court for sentence.

[7] Nothing further appears to have occurred for some time and so he again approached the Court of Appeal **for a determinate sentence to** be ordered. The Appeal Court ruled that the power to sentence remained with the original sentencing court and referred it back, once again, to the Supreme Court.

[8] Having had the assistance of counsel as to the correct approach to such a case, I now pass sentence.

[9] Remarkably, in the light of the way he behaved on that occasion, the applicant had no previous convictions and was described by others as a well behaved and sensible young man. That description

has been borne out by his conduct in prison since he was sentenced. He has been described as a model prisoner most of the time. He has volunteered to assist the prison nurse, has engaged in drugs _;otinselling and has worked in the prison kitchen. He has also been able to work unsupervised outside the prison on occasions. His parents live in the Bahamas and will provide a ticket as soon as the applicant is released and there is no doubt he will leave this country although he retains the right to return.

1101 I accept that on the authorities the Court must now pas a determinate sentence and, in so doing must not only consider the fact of the offences but also the possibility of rehabilitation and reform of the applicant. His time and attitude whilst in prison are, therefore, relevant and important considerations.

[11] Against that is the fact that this was a serious attack in which this man played a full part and as a result of which another man has needlessly died. The measure of the sentence must take both into account.

1121 Ground C3, when passing sentence, considered the proper determinate sentence for the attempted murder was eight years. He accepted that all the injuries suffered by Danny Delaney, the victim of the attempted murder, were inflicted by the applicant's brother but the evidence was that both were attacking him at that time.

[13] I see little to mitigate the offence itself. I note, whatever the applicant's present attitude, both brothers pleaded not guilty and, although he was under eighteen at the time and I allow for that, his attitude was no different to that of his adult brother who received a sentence of life imprisonment. However, I allow for his good character before this offence and his attitude and behaviour since he was sent to prison. I accept that he is unlikely to re-offend. I also note the extreme disappointment he must have felt when, having heard he was to be released in 2004, he was then told he would not. Similarly the stress caused by the uncertainty of his position since the last appearance before the Appeal Court. All these matters allow me to reduce the sentence.

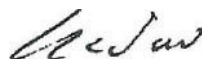
[14]It is important that the sentence for murder, normally requiring a mandatory life sentence, should in his case demonstrate the more serious consequences of taking another man's life compared with an attempt to do so. As a result, it must be substantially more than the sentence the judge who heard the evidence considered was appropriate for the attempted murder.

[15]The proper sentence for this offence is one of fourteen years imprisonment but deducting the time he spent in police custody before the trial and consideration of the matters I have mentioned allow me to reduce that to one of twelve years imprisonment and that is the sentence I pass. It will be concurrent with the sentence for attempted murder and will start from the date of sentencing for attempted murder.

Sentence:

Count one — Murder: twelve years imprisonment to run from 21 March 2001 and to run concurrently with the sentence for attempted murder already ordered

i.e. a total sentence of twelve years from 21 March 2001.



3 June 2009

Gordon Ward
Chief Justice

