



**IN THE SUPREME COURT
TURKS AND CAICOS ISLANDS
BETWEEN:**

CR 29 / 2020

**REX
and
NAJAH KARIOKA**

BEFORE: **The Honourable Mr. Justice Davidson Kelvin Baptiste (Ag.)**

APPEARANCES: **Mr. Oliver Smith KC for Najah Karioka.**
 Ms. Mickia L. Mills Senior Public Prosecutor.
 Ms. Tamika Grant Senior Public Prosecutor.

HEARD: **28th August 2023**

DELIVERED: **29th August 2023**



SENTENCING JUDGMENT

1. **Baptiste J (Ag.):** Forty-five-year-old Najah Karioka falls to be sentenced consequent upon having been found guilty of murder of Symaderia Karioka, her nine year old daughter, in a judge alone trial, on 3 August 2023. The facts of this case fall within a narrow compass. In a nutshell, Ms. Karioka shot and killed the child while she lay in bed for no obvious reason. At the time of the killing, the only persons in the house were Ms. Karioka and her daughter. Soon after the killing, she called 911 for help and alerted the landlady, her neighbour.
2. The statutory provisions pertaining to sentencing for murder, find expression in the Offences Against the Persons Ordinance Chapter 3:08, and the Parole of Prisoners Ordinance Chapter 18:04. Section 5 of the Offences Against the Persons Ordinance

provides that a person above the age of eighteen years who is convicted of murder shall be sentenced to imprisonment for life.

3. Section 7 (1) of the Parole of Prisoners Ordinance Chapter 18:04 ordains that:

“Notwithstanding any other law to the contrary but subject to subsections (2) and (3), when sentencing a person to a term of imprisonment for life, the court shall specify the period of incarceration the person shall serve before the person is eligible to be considered for release on licence, the period being such the court shall consider appropriate to satisfy the requirements of retribution, deterrence and rehabilitation.”

Section 7 (2) states that for murder, the period referred to in subsection (1) shall be thirty years before the prisoner is eligible for release unless there are - (a) extenuating circumstances, exceptional in nature, in which case the court may impose a lower period of incarceration; or (b) aggravating circumstances, exceptional in nature, in which case the court may impose a longer period of incarceration.

Subsection 3 of section 7 provides the circumstances in which the period referred to in subsection 1 shall be a whole life before the prisoner is eligible for conditional release, unless there are extenuating circumstances, exceptional in nature, in which the case the court may impose a lower period of incarceration. I note here that none of those circumstances are engaged in this case.

Subsection 4 of section 7 provides that *“in making a decision under subsection 2 (a) or (b) or (3) the court shall state the extenuating circumstances or the aggravating circumstances, as the case may be”*.

4. In the Crown’s written submissions, Ms. Mills submitted that section 7 envisages a three - step approach. The first step concerns the choosing of a starting point; either 30 years for murder under subsection 2, or whole life for circumstances captured by subsection 3. If the starting point is not whole life, the court has to choose 30 years as the starting point.
5. In my judgment, a whole life starting point is not engaged having regard to the provisions of subsection 3 of section 7 of the Parole of Prisoners Ordinance, as none of the circumstances therein mentioned are applicable. In the premises, the starting point is 30 years. Having made that determination, the second step is for the court to consider whether there are extenuating circumstances, exceptional in nature to invoke the exercise of its discretion to impose a lower period of incarceration; or aggravating circumstances, exceptional in nature warranting the imposition of a longer period of incarceration, before eligibility to be considered for release on licence.

6. Learned counsel Ms. Mills, commended the following circumstances as exceptionally aggravating to occasion an uplift of the starting point of 30 years: (a) some level of premeditation as evidenced by the presence of a firearm; and (b) the use of a firearm. I am not, however, of the view that the matters referred to or relied on warrant or justify an uplift. The presence of or use of a firearm does not in and of itself evince premeditation.
7. Ms. Mills advanced the following as aggravating circumstances in respect of the offence and the offender:
 - a. Ms. Karioka is the mother of and the caretaker of the deceased child;
 - b. the deceased was particularly vulnerable being 9 years old;
 - c. tampering with the crime scene in an attempt to conceal evidence;
 - d. concealment of the weapon used in the commission of the offence;
 - e. washing of hands to conceal true involvement in the offence; and
 - f. deliberately attempting to implicate others.

As a mitigating factor, Ms. Mills cited no previous conviction. Ms. Mills contended that the aggravating factors support an uplifted sentence of more than 30 years before Karioka is eligible for parole. I do not subscribe to that view.

8. In his written submissions Mr. Smith KC stated that for the offence of murder, the penalty is life imprisonment, but the Court shall specify the period of incarceration the person shall serve before being eligible to be considered for release on licence, and such period takes into consideration the various principles of sentencing. The term shall be 30 years unless there are circumstances which are exceptional or extenuating.
9. Mr. Smith KC argued that when all relevant factors are placed in the balance, the inescapable conclusion is that there should be a downward adjustment from 30 years so that Karioka shall serve a period of not more than 15 years before being eligible for release on licence. Mr. Smith KC invited the court to consider the totality of the circumstances, the circumstances of the offence and the offender and the classic principles of sentencing: retribution, deterrence, prevention and rehabilitation, so that the sentence will fit the crime. Learned King's Counsel also invited the court to give full credit for time spent on remand in keeping with **Romeo da Costa Hall v R [2011] CCJ 6 (AJ)**.
10. Mr. Smith KC rightly recognised that murder is a serious offence and is made worse when the circumstances involve the killing of a child by someone in a position of trust. The use of a firearm is also an aggravating feature. He however, submitted that these aggravating factors are far outweighed by the mitigating considerations.
11. Mr. Smith KC argued that acts of concealment such as washing hands to conceal involvement, concealment of murder weapon and attempts to implicate others have not been recognised as circumstances, sufficiently exceptional to be deemed aggravating

features. Further, Ms. Karioka's previous convictions should not be treated as aggravating features as they do not relate to offences of the kind or severity for which she has been convicted. These previous convictions did not involve the use of a weapon.

12. Further, a significant amount of time has elapsed since Ms. Karioka's most recent convictions prior to the present one, diminishing their relevance. Her last conviction was 12 years ago for marijuana. In the light of the nature of her previous convictions and their antiquity, Mr. Smith KC argued that the present crime represents an aberration, rather than a pattern of serious crimes against others or crimes involving weapons. Mr. Smith KC submitted that this warrants a downward adjustment in the tariff and cited **Patricia Henry v R [2011] JMCA Crim 16, at paragraph 52**.
13. Mr. Smith KC relied on several factors as mitigation. There is no evidence of premeditation or planning. The presence of a gun without more is not evidence of premeditation. No evidence of intention to kill. Lack of intention to kill as opposed to causing grievous bodily harm. Ms. Karioka made attempts to seek medical and police assistance shortly after the time the gunshot was heard, which Mr. Smith KC argued are inconsistent with an intention to kill.
14. Mr. Smith KC referred to the mental disorder of Ms. Karioka as a mitigating factor which would serve to lower the level of her degree of culpability. Mr. Smith KC referred to the Pre-sentencing report which gave details of Karioka's history of mental illness. She was diagnosed with Bipolar Affective Disorder and requires strict adherence to a daily medication regime. The Report also revealed her troubled upbringing and delinquent behavior going as far back as her early teen age years, and her continued absence of familial support.
15. In his oral submissions, Mr. Smith posited that Ms. Karioka's mental disorder is a significant extenuating factor the court should consider in applying section 7 (2) (a) of the Parole of Prisoners Ordinance. Mr. Smith KC contended that while Ms. Karioka must be held accountable for her actions, the negative impact of her upbringing and social circumstances, along with continuing mental health concerns should be reflected in the sentence imposed specifically by a downward adjustment of the tariff. Further, given the details of her mental illness, prolonged incarceration would not be appropriate.
16. Mr. Smith KC also highlighted the issue of rehabilitation as an important element in the sentencing exercise and stated that there is nothing to indicate that there are facilities at His Majesty's Prison which would meet the rehabilitation objective of Ms. Karioka's sentence, given her mental health concerns. Mr. Smith KC submitted that in the absence of any suitable facility to meet the needs of a defendant such as Karioka, a term of 15 years would achieve the punitive objective of her sentence, and that she be eligible for release thereafter with conditions which specifically address her mental health needs and her ultimate rehabilitation.

17. In conclusion Mr. Smith KC submitted that in the totality of the circumstances, when all factors are weighed in the balance, the sentence to be imposed before Ms. Karioka's eligibility for release on licence should be reduced from 30 years as set by statute and a term of 15 years imposed given:
- a. that Karioka must receive credit for time spent in custody prior to sentencing;
 - b. the lack of evidence of premeditation;
 - c. the lack of evidence of an intention to kill as opposed to causing grievous bodily harm;
 - d. the lack of any recent and relevant previous convictions, or any evidence of a tendency to inflict harm on others or to use weapons;
 - e. Karioka's social circumstances and mental concerns; and
 - f. the unsuitability of the facilities at His Majesty's Prison to rehabilitate persons with mental health concerns such as Ms. Karioka.
18. It is clear to me that the mental health issue pertaining to Ms. Karioka, is a matter of more than passing moment in this sentencing exercise. The court has been furnished with psychiatric reports concerning Ms. Karioka as well as the Pre – Sentence Report and has also heard the submissions from Mr. Smith KC on the issue of Ms. Karioka's mental health and sentencing. The Court is also grateful for having been furnished by Ms. Mills with sentencing guidelines from the United Kingdom pertaining to sentencing for persons suffering from mental disorders. In the premises, it is incumbent to consider the important issue of sentencing a person with mental health conditions or disorders and the relevance of those conditions to sentencing.
19. In **PS & Ors v R [2019] EWCA Crim 2286, at paragraph 9**, the court addressed the issue of the relevance of mental health conditions or disorders in sentencing. The court stated that mental health conditions or disorders may be relevant to the decision as to the type of sentence imposed. Where a custodial sentence is necessary, mental health conditions and disorders may be relevant to the length of sentence. In this regard, it is the offender's mental health at the time of sentencing, rather than at the time of the offence which must be considered. In accordance with the principles applicable to physical ill - health, mental health conditions and disorders can only be taken into account in a limited way so far as the impact of custody is concerned. Nonetheless, the court must have regard to any personal mitigation to which the prisoner's mental health is relevant.
20. The court further addressed the issue of sentencing at paragraphs 17 and 18 of **PS & Ors v R**. The court stated that sentencing an offender who suffers from a mental health condition or disorder necessarily requires a close focus on the mental health of the individual offender (both at the time of the offence and at the time of sentence) as well as on the facts and circumstances of the specific offence. In some cases, the prisoner's mental health may not materially have reduced culpability; in others, culpability may have been

significantly reduced. In some cases, the prisoner may be as capable as most other offenders of coping with the type of sentence which the court finds appropriate; in others the mental health may mean that the impact of the sentence may be far greater than it would be on most other offenders. It follows that in some cases the fact that the offender suffers from a mental health condition or disorder may have little or no effect on the sentencing outcome. In other cases, it may have a substantial impact.

21. In light of the legal position stated above, it is important to examine the most recent psychiatric reports pertaining to Ms. Karioka. On 3 August 2023, Ms. Karioka was seen by both the psychiatrist and psychologist; they determined that she was fully conscious and adequately oriented to time, space and person. Ms. Karioka had complete insight regarding her current predicament; she was observed to be depressed but with effective coping mechanisms. The psychiatrist noted that Ms. Karioka requires regular follow - ups with the mental health team and strict psychiatric treatment to avoid potential relapse. The triggers that can exacerbate her symptoms include severe stress or trauma, lack of sleep, physical illness, food deprivation and drug abuse. Ms. Karioka has not admitted her mental illness and admitted taking her medication as she deems fit.
22. There was a follow up Psychiatric Report from Dr. Glasgow, the psychiatrist, dated 7 August 2023, which stated that Ms. Karioka is a known psychiatric patient since 20 July 2016 when she was diagnosed with Bipolar Affective Disorder. She was examined on 3 August 2023 by the Mental Health professionals as a regular follow up based on the guilty verdict. During the interview she was fully conscious and properly oriented in time, space and person with a cooperative attitude without aggressive behavior or agitated tendencies. While she was narrating the recent events Ms. Karioka was observed with depressive mood, but with effective cope mechanism. No negative /positive psychotic symptoms were visible at the time. She had proper insight about her current situation. Based on her previous personal history of mental illness, the regularly follow-up through the Psychology and Psychiatrist consultation was recommended as well as compliance with the prescribed psychiatric treatment.
23. Having regard to the content of the most recent psychiatric assessments of Ms. Karioka, as indicated above, in my judgment, her mental health disorder would have little impact on the sentencing outcome. It is important though that she there be regular follow-ups with the mental health team and strict psychiatric treatment to avoid a relapse. I also pay regard to the risk assessment in the Pre-Sentence Report which indicates a high risk of recidivating, as indicated below.
24. The Pre - Sentence Report dated 22 August 2023 was submitted in respect of Ms. Karioka by the Director of Rehabilitation and Community Services. The Report indicated that Ms. Karioka is currently diagnosed with Bipolar Affective Disorder and takes daily medication. She has been a client of the Department of Behavioural Health Service since July 2016 and requires strict adherence to her medication regime. Ms. Karioka is highly aggressive when

not compliant with her medication. She was previously diagnosed with cannabis - induced psychosis and schizophrenia in May 2015 and July 2016 respectively, for which she received treatment and is now reported dormant. In May 2023, her mental health deteriorated and she was transferred from the prison to the Center of Hope in Grand Turk for treatment.

25. The Pre - Sentence Report also dealt with the issue of risk assessment. Ms. Karioka was administered a risk and needs assessment test empirically associated with recidivism and offender strengths, supervision considerations, and other factors associated with adult offenders. The assessment results indicate she possesses a high risk of recidivating. She is very calculating and unassuming and has aggressive and coercive tendencies that is reflective in her desire to control the narrative and have her own way.
26. Ms. Karioka did not always have a mental illness. Her behavior is manageable when medicated but becomes extremely volatile when not compliant. Individuals with bipolar are likely to have a symptom profile of mania, such as impulsivity, poor judgment, and psychosis which can contribute to or predispose them to assaultive and threatening behavior, thereby increasing their risk of criminal offending. All of these symptomology have been observed in Ms. Karioka's history.
27. Ms. Karioka was oriented in three spheres at the time of the incident: she was fully conscious and capable of differentiating between right and wrong behavior. She does not have a strong social support system. Has had frequent bouts of homelessness. Has a high risk of re-offending. The factors contributing to her high risk include lengthy criminal history, poor family dynamics, substance abuse issues and poor coping and self-control skills.
28. The court considers the principles of sentencing, the personal circumstances of the offence and of the offender, and the aggravating and mitigating circumstances in fashioning an appropriate sentence. The personal circumstances of the offender primarily relate to her troubled upbringing and her mental health issues as indicated in the Pre-Sentence Report and the psychiatric reports. With respect to the offence, murder is undoubtedly a very serious offence. The position is that the child was shot dead by her mother while lying in bed, without any apparent motive.
29. I recognise that '*sentencing is not a mathematical exercise with a formulaic or linear approach. The fixing of a minimum period to be served for murder cannot be approached as an entirely mathematical exercise. It involves a weighing of material factors*'.
30. In advocating for a reduction of sentence from 30 years to 15 years before Ms. Karioka's eligibility for release on licence, Mr. Smith KC advanced various matters as mitigation. I agree that there is an absence of evidence of premeditation. I am also of the view that the convictions of Ms. Karioka are spent and should not be considered. In fact, she was treated

as a person of good character. I addressed the mental health issue and impact on sentencing earlier in this judgment. I do not accept that there was the lack of an intention to kill, as opposed to causing grievous bodily harm. Surely, shooting child in the head while she lay in bed is indicative of one thing, an intention to kill.

31. In my view, the aggravating factors are not outweighed by the mitigating factors. It well established that the weight of mitigating factors diminishes the more serious the offence. Factors such as good character and rehabilitation, would certainly not carry much weight in the circumstances of this case. As important as the prisoner's personal circumstances may be, rehabilitation of offenders is but one of the purposes of sentencing. The weight rehabilitation will bear will vary from case to case but it will rarely be of great weight. The punishment of offenders and the protection of the public are also at the heart of the sentencing process. Murder is a most serious offence.
32. The use of a firearm is an aggravating factor in itself. When used against a vulnerable child in the context of one for whom there is care and custody, it is even more egregious. The deceased was particularly vulnerable, being 9 years old. Ms. Karioka was the mother of and the caretaker of the child. She was in a position of trust.
33. I now consider the appropriate sentence in the circumstances of this case. Starting from 30 years, I make a downward adjustment of three years to reflect the mental disorder of Karioka, which I consider to be the most significant factor advanced in mitigation, although in accordance with the prevailing learning, it can only be taken into account in a limited way so far as the impact of custody is concerned.
34. Ms. Karioka has been in custody since 20 May 2020. In accordance with established principle, she is entitled to full credit for the 3 years, 3 months and 9 days spent on remand as of today's date.
35. It is ordered that Ms. Karioka is sentenced to life imprisonment and is not eligible for parole until she has served 27 years' imprisonment from which the time spent on remand - three years, three months and 9 days is to be deducted.
36. Ms. Karioka is to undergo regular follow- up assessment by the Mental Health team, and psychology and psychiatrist consultation and compliance with the prescribed psychiatric treatment.

The Hon. Mr. Justice Davidson Kelvin Baptiste
Judge (Ag) of the Supreme Court

