

**IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction**

ON APPEAL FROM THE COURT OF APPEAL OF BARBADOS

CCJ Appeal No CR 2 of 2009
BB Criminal Appeal No 10 of 2007

Between

JEFFREY ADOLPHUS GITTENS

Appellant

And

THE QUEEN

Respondent

**Before the Right Honourable
and the Honourables**

**Mr Justice de la Bastide, President
Mr Justice Nelson
Mr Justice Pollard
Mr Justice Saunders
Mme Justice Bernard
Mr Justice Wit
Mr. Justice Hayton**

Appearances

**Mr Ralph A Thorne QC, Mr Bryan L Weekes and Mr Satcha Subhas-Chandra Kissoon for
the Appellant**

Mr Alliston Seale and Mr Roy Hurley for the Respondent

DECISION

**Delivered orally by the President
The Right Honourable Mr Justice Michael de la Bastide
on the 2nd day of December 2009**

DECISION

- [1] In this matter we can give our decision now. This has been facilitated by the fact that the course which we propose to take is one which is recommended by Counsel for the Respondent and to which Counsel for the Appellant has no objection. But quite apart from the fact that it is almost in the nature of a consent order, it is what we consider to be the proper course to take in this matter. The course is as follows.
- [2] We quash the sentence of 20 years imprisonment imposed by the Court of Appeal. We remit the matter for sentencing to Mr. Justice Worrell in the High Court or if he is for any reason not available, to another judge of the High Court. But it is important that if at all possible the matter should be put before Mr. Justice Worrell who was the trial judge i.e. the judge who presided at the trial. And thirdly, we order that a pre-sentencing report be prepared and submitted as soon as possible to Mr. Justice Worrell for use at the sentencing hearing.
- [3] We will give our reasons more fully in writing on a date to be fixed but I can indicate briefly the reasons for our decision. We consider that the Court of Appeal's decision ought not to stand for the following reasons. First, because of the omission of that court to give Counsel for the Appellant an opportunity to be heard on the question of sentence before it made its order of imprisonment for 20 years.
- [4] Secondly, we think that although it was within the power of the Court of Appeal to dispense with a pre-sentencing report, there was no good reason in this case for doing so. In the words of Mr. Thorne, Counsel for the Appellant, such a report would have been 'of high value' in this case. While we do not necessarily adopt that view, we think that it certainly could have been quite helpful and therefore such a report ought to have been obtained.

[5] Thirdly, there is the fact that the Court of Appeal was not in a position to make certain findings of fact which had to be made in order to arrive at a proper determination of sentence. The evidence which was led at the trial was by no means consistent. There was conflict between, for instance, the evidence of the two eye witnesses and the statement given by the accused to the police which was put into evidence, and the fact that the Appellant was convicted of manslaughter did not of itself resolve some of those conflicts. Therefore it would be important for the sentencing court to be able to make the necessary findings of fact in order to assist it in arriving at the right sentence. For that reason we consider that the matter should have been referred by the Court of Appeal to Mr. Justice Worrell for sentence in the first instance.

[6] Fourthly, there is the fact that the requirement of the Penal System Reform Act Cap.139 is that if a custodial sentence is imposed, the reason for it should be explained by the sentencing court to the accused in open court. That may, in the context of a manslaughter case perhaps be a technical requirement and one which Counsel for the Appellant was prepared to waive in an effort to persuade this Court to substitute its own sentence. But it was a requirement which was not observed in the Court of Appeal and we think that it is important for the provisions of the Act to be scrupulously observed.

[7] The last point which we would note, is that in relation to the justification for a custodial sentence, the Act specifies two grounds on which such a sentence may be justified. One has to do with the seriousness of the offence and the other with the need to protect society from the offender. Now in the context of this case it may be obvious that the first of these requirements was satisfied, but nonetheless we wish to draw attention to the fact that these are independent and separate grounds for ordering a custodial sentence and a court which is imposing such a sentence ought to indicate quite expressly which of these two grounds is being relied on or if both are, then to so indicate, and also to give reasons for its decision.

[8] That is as far as I would go at this time, but these matters will be dealt with perhaps a little more comprehensively and cohesively in the written judgment which will follow in due course. We thank Counsel for their assistance in this matter.