COMMOMWEALTH OF THE BAHAMS
IN THE SUPREME COURT
(CRIMINAL DIVISION)

INFORMATION NO. 291/11/2012

BETWEEN:

REGINA

-v-

JEROME BUTLER

Before: The Hon. Madam Justice Iindra Hariprashad Charles

Appearances: Mr. Uel Johnson, Senior Counsel and Ms. Al-Leecia Delancy, Assistant Counsel of the Attorney General's Chambers for the Crown
Mr. David Cash for the Defendant

Hearing Date: 21 April 2017

JUDGMENT ON SENTENCING

[Criminal Law – Murder – Conviction of murder – Sentencing Guidelines – Aggravating factors outweigh Mitigating features]

Charles J:

[1] This is an unfortunate case. The defendant, Jerome Butler, aged 58 lived with his aged mother, Princess Ruth Butler. She was 81 at the date of her death. By all accounts, she led an active and healthy life. On about 6.00 a.m. on 4 February 2015, she was found unresponsive in her bedroom. Dr. Austin Davis, a medical doctor was called in. He pronounced her dead. According to him, she died on natural causes.

[2] The Defendant's sister, Faith Butler-Cleare was apprehensive as to her mother's death. The night prior to her death, she had picked her up from

church and was with her until after 8.00 p.m. The police began investigation and the defendant was later arrested and charged with the murder of his mother.

[3] On 26 January 2017, a unanimous jury found the Defendant guilty of intentionally causing the death of his mother by unlawful harm. A sentencing hearing was held on 21 April 2017. The defendant is before me today for sentencing.

The salient facts

[4] Briefly, the facts of the case which the jury must have accepted can be summarized as follows: The defendant and the deceased have lived together in their family owned residence all of his life. His brother Jonathan Butler lives in a cottage on the property.

[5] On the 3 February, 2015 approximately 7:30pm the deceased' daughter Faith Butler-Cleare dropped the deceased home from Bible Study. Around 8:00pm Faith left the residence leaving the deceased, who was in good spirits and apparent good health, and the defendant at the house. The defendant around 11:30pm that night went into the deceased bedroom to say good night and returned to his room.

[6] On the morning of February 4, 2015 sometime around 6:30am the defendant found the deceased lying on the floor in her bedroom lifeless. He checked for vital signs with negative results then photographed and videotaped her lifeless body lying on her bedroom floor. There were no signs of forced entry to the residence. The defendant accepted that he and the deceased were the only persons in the residence during the time of her death.

[7] The deceased did not suffer from any chronic or any other form of illness and was not on form of medication. She exercised twice a week and had her blood and cholesterol levels checked monthly.

[8] Dr. Davis and the officers who initially visited the scene did not detect any signs of foul play.

Post offence reports

[9] However, the post-mortem examination conducted by the pathologist, Dr. Sands, revealed that the deceased had died of probable asphyxia (lack of oxygen). A complete autopsy revealed blunt force trauma to the neck and bleeding into the muscles of the front of the neck and petechiae in the eyes and the throat due to ruptured capillaries. The autopsy also revealed blunt force trauma to the head including abrasions (scrapes) and contusions (bruises) to the deceased face and bleeding on her skull and over her brain, which occurred on or around the time of her death and which may have contributed to her death.

[10] The deceased complained to her daughter Faith in 2014 that the defendant was becoming more harsh and abusive toward. In the probation report she stated that four month leading to the death of the deceased she (her mother) complained to her (Mrs. Butler-Cleare) that the defendant was cussing her out more frequently. However, she revealed that sometimes the defendant was affectionate towards the deceased and other times he would shout profanity at her. Still the deceased refused to move because she said that she believed that she could handle the defendant.

[11] The deceased confided in her friend Cynthia Davis with whom she has been friends for more than 30 years that she and her husband were about the way the defendant handled them. The deceased constantly complained to Ms.

Davis after her husband died about the way the defendant mean the defendant was toward her and how he cursed her.

[12] In 2015 the deceased visited Ms. Davis at her place of business and on that occasion she cried and complained about how cruel the defendant treated her. Ms. Davis encouraged the deceased to tell Faith about the way Jerome was treating her but she reiterated that she would not leave her house because it was where her husband had left her.

[13] According to the probation officer's report the defendant had a history of abuse of alcohol, marijuana and cocaine consumption. The defendant himself admitted having used marijuana and being addicted to cocaine and abstained from using cocaine of his own volition. More recently, he admitted that he smokes one marijuana joint per month and drink one or two beers a week but later confessed that he sometimes binge during days off from work which supports Faith claim that the defendant purchased cases of beers and consume most of it in a matter of days.

[14] The defendant admits that he and the deceased had "disagreements" but denied cursing her. The defendant's girlfriend Ms. Danielle Thompson also admitted that she witnessed arguments between the deceased and the defendant which were precipitated by the deceased controlling demeanour. Nonetheless, she refused to comment when asked if she ever heard him swear at his mother and stressed the defendant never physically abused her. To the contrary, Faith described how the defendant had physically assaulted his brother Johnathan (who is deaf) by beating him in the head.

[15] Defence Counsel submitted that the defendant is of good character save for one previous conviction for possession of dangerous drugs. According to learned counsel because the offence did not involve a firearm and because

the defendant is 58 years of age he does not pose and danger or threat to public at large and should be sentenced within the lower range.

The legislative framework

[16] Section 291(1)(b) of the Penal Code (Amendment) Act, 2011, No. 34 of 2011 ("the Act") states as follows:

> **"Notwithstanding any other law to the contrary-**
>
> **(a) ……**
>
> **(b) every person convicted of murder to whom paragraph (a) does not apply** –
>
> **(i) shall be sentenced to imprisonment for life; or**
> **(ii) shall be sentenced to such other term given the circumstances of the offence or the offender as the court considers appropriate being <u>within the range of thirty to sixty years imprisonment</u>…."** (Emphasis added)

[17] Learned Counsel Mr. Johnson submitted that a convenient starting point is the case of **Attorney General v. Larry Raymond Jones et al** (SCCr App. Nos. 12, 13 and 14 of 2007) [unreported], where the Bahamian Court of Appeal set guidelines in order to assist trial judges at arriving at some uniformity in sentencing. At paragraph 17 of the judgment, the Court of Appeal stated as follows:

> **"In our judgment, where, for one reason or another, a sentencing judge is called upon to sentence a person convicted of a depraved/heinous crime of murder and the death penalty is considered inappropriate or not open to the sentencing judge and where none of the partial excuses or other relevant factors are considered weighty enough to call for any great degree of mercy, <u>then the range of sentences of imprisonment should be from 30 to 60 years</u>, bearing in mind whether the convicted person is considered to be a danger to the public or not, the likelihood of the convict being reformed as well as his mental condition. Such a range of sentences would maintain the proportionality of the sentences for murder when compared with sentences for manslaughter.**

[18] The range of sentences from thirty to sixty years was given statutory approval when in November 2011, the Legislature enacted the amendment to the

Penal Code: section 291(1)(b) of the Penal Code (Amendment) Act, No. 34 of 2011 (supra).

[19] In the present case, the Crown seeks a sentence pursuant to section 291(1)(b) of the Act.

Aggravating and mitigating factors

[20] The Crown has helpfully identified the aggravating factors in this case as follows:

1. **The seriousness of the offence**: the deceased approximately six (6) hours after receiving injuries.

2. **The gravity of the offence**: See: **Shaunlee Fahie v The Queen (HCRAP 2008/003) Territory of the Virgin Islands** – per George-Creque JA at paras. 10 and 19.
3. **Lack of remorse**: Notwithstanding the unanimous finding of guilt by the jury, the defendant has maintained his innocence and showed no emotions or remorse due to the death of his mother. He did not call the ambulance or the police for immediate assistance. Instead he took photographs and video taped the deceased lying lifeless on the floor of her bedroom.
4. **The deceased was very young very old:** She was 81 years of age which made her a more vulnerable victim.

[21] The Crown has helpfully identified one mitigating factor in this case as follows:

1. The defendant has been is a productive citizen who has been characterized as being of good behavior.
2. The defendant was gainfully employed.

[22] The Defence has identified the mitigating factors in this case as follows:

1. **Previous good conduct**: The defendant's has one previous minor drug conviction for possession. He was bound over to keep the peace for one year.
2. **No use of a weapon":** The offence did not involve the use of a weapon. The evidence is that he strangled his mother.

3. **No danger to soci**ety: The convict is 58 years of age and has not demonstrated in his history that he is a danger to the public at large.
4. **Possibility of reform**: There is nothing in the convict's history that indicate that he is incapable of reform. He is an educated Bahamian male who has contributed to society. He was involved in church activities and has been employed at the Department of for more than 30 years. He was admired by his colleagues, interacted well with them, and possessed good work ethics.

Analysis

[23] The killing of one's mother or matricide is uncommon in the Bahamas and throughout the Caribbean. If it does happen, the defences are normally diminished responsibility as in the Saint Lucian case of **The Queen v Andrew Kagan Richardson**, or insanity in the case of The Queen v

[24] In this case, the defence was that he did not kill his mother. She died of natural causes.

[25] Murder is a very serious offence. Its gravity is reflected by the sentence which it carries. However, the court has a discretion in sentencing pursuant to section 291(1)(b) of the Act to enable it to do justice having regard to the particular facts of each case.

[26] Although the offence of matricide is not novel, it is indeed still a rare occurrence in The Bahamas. It is not normal to kill your own mother. Something went terribly wrong.

[27] In sentencing, the judge is obliged to do a balancing exercise, that is, to weigh the mitigating factors against the aggravating factors and to determine which is in the preponderance.

[28] In addition, I must have regard to the four classical principles of sentencing and to apply them to the facts of the case to see which of them has the greatest importance in the case. These principles could be summed up in four words "retribution, deterrence, prevention and rehabilitation."

[29] I have considered each of these principles as it relates to the defendant. I have taken into consideration that the defendant has not breached any Prison Rules during his incarceration on remand. Given his disposition, I believe that such exemplary conduct will continue.

[30] Additionally, there are two levels at which deterrence surfaces i.e. general and specific. I do not believe that there is need for specific deterrence. General deterrence is necessary in order to deter others like the defendant from following suit. In **Romain Bend and Rodney Murray v The Queen Criminal Appeals Nos. 19 and 20 of 2001, Court of Appeal, Barbados (at para. 25)**, per Simmons CJ said:

> **"…Civil society must be protected and sentences by way of general deterrence must be used in appropriate cases to mark down our disapproval of behaviour such as was witnessed in this case. Courts must do all in their power to deter such behaviour. And we should also observe that the fact that [Murray] had no previous criminal record does not avail him when this Court is dealing with a case of this gravity…."**

[31] Taking all matters into consideration including the mitigating as well as the aggravating factors, a sentence of thirty-five years imprisonment is justified in the circumstances. The two years spent on remand awaiting trial is deducted from the sentence.

The sentence

[1] The Defendant, Jerome Butler is sentenced to thirty-three (33) years imprisonment from his date of conviction on 27 January 2017.

[2] In addition, the defendant will receive counseling in anger management and substance abuse on such counseling to be determined by a qualified counselor.

Dated this 4th day of May, A.D. 2017.

Indra H. Charles

Justice