TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

HCA Crim No. S 009 of 2003.

THE STATE

VS

DUNSTAN WILLIS

Before the Honourable Justice P Moosai

APPEARANCES

Ms. Mauriciea Joseph and Ms. Danielle Thompson for the State.
Mr. Kevin Ratiram for the Defence.

RULING

1. Introduction.

1. The Applicant, now 57 years old, was charged with murdering his 73-year-old father, Bradley Willis on January 8, 2001. As it stands he has now been in custody for 11 ½ years.

2. On March 8, 2004 the State accepted the Applicant's plea of not guilty to murder, but guilty to manslaughter on the ground of diminished responsibility. Mr. Justice Volney sentenced him to be detained at the Court's pleasure, and not to be brought up for review before a period of 7 years. He is now before the Court for his first review of sentence. It is noteworthy that the trial judge, while fixing a minimum term of 7 years, did not specify the length of the determinate

sentence. As the law in this area is in its early stage of development, it may be of assistance to comment upon same.

2. The law.

3. Sections 4 and 4A of the Offences Against the Person Act ("OAPA"), Chapter 11:08 prescribe that, upon a person been convicted of manslaughter on the ground of diminished responsibility, the court may order such person to be detained in custody in such place and manner as it thinks fit until the court's pleasure is known. This defence, which places the burden of proof on the Defence, is purely statutory and reduces what would otherwise be murder to manslaughter. Diminished responsibility is defined in section 4 A (1):

> "Where a person kills or is a party to the killing of another he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing."

4. Generally in determining what is an appropriate sentence, a court must have regard to the principal objectives of sentencing. In ***Benjamin v. R***[1] these were held to be:

1. The retributive or denunciatory, which is the same as the punitive;
2. The deterrent vis-à-vis potential offenders;
3. The deterrent vis-à-vis the particular offender then being sentenced;
4. The preventative, which aims at preventing the particular offender from offending again by incarcerating him for a long period; and
5. The rehabilitative, which contemplates the rehabilitation of the particular offender so that he might resume his place as a law-abiding member of society.

The pre-eminence of any one or more of these objectives will depend upon the individual circumstances of the particular case.

[1] *Benjamin v R* (1964) 7 WIR 459 at 460-461 [CA of TT].

5. A five-member Court of Appeal in ***R v. Wood***[2] endorsed the following summary of the sentencing options then available to a judge in cases of diminished responsibility set out in ***R v. Chambers***[3] :

> In diminished responsibility cases there are various courses open to a judge. His choice of the right course will depend upon the state of the evidence and the material before him. If the psychiatric reports recommend and justify it, and there are no contrary indications, he will make a hospital order. Where a hospital order is not recommended, or is not appropriate, and the defendant constitutes a danger to the public for an unpredictable period of time, the right sentence will, in all probabilities, be one of life imprisonment.
>
> In cases where the evidence indicates that the accused's responsibility for his acts was so grossly impaired that his degree of responsibility for them was minimal, then a lenient course will be open to the judge. Provided there is no danger of repetition of violence, it will usually be possible to make such an order as will give the accused his freedom, possibly with some supervision.
>
> There will however be cases in which there is no proper basis for a hospital order, but in which the accused's degree of responsibility is not minimal. In such cases the judge should pass a determinate sentence of imprisonment, the length of which will depend on two factors: his assessment of the degree of the accused's responsibility and his view as to the period of time, if any, for which the accused will continue to be a danger to the public.

6. The sentencing options set out in ***R v. Chambers*** accord with those available to local courts. Thus, where a person is convicted of manslaughter on the ground of diminished responsibility, section 4 A (6) enables a court to order such person to be detained in safe custody in such place and manner as the court thinks fit until the court's pleasure is known. Further section 4 A (7) empowers the court to order such a person to be dealt with as a mentally ill person in accordance with the laws governing care and treatment of such persons or in any manner the court may think necessary.

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[2] *R v Wood* [2010] 1 Cr App R (S) 6 [UK].
[3] *R v Chambers* (1983) 5 Cr App R (S) 190 at 193-194 per Leonard J.

7. Thus if the case is not one for a hospital order nor for a sentence of life imprisonment, then the sentence should reflect the offender's degree of responsibility for his acts, with it being possible to give him his freedom, possibly with some supervision, where his responsibility was so grossly impaired as to make his culpability minimal: **Archbold 2012**[4]. However in carrying out its sentencing exercise with respect to someone convicted of manslaughter on the ground of diminished responsibility, courts need to be mindful of preserving public confidence in the administration of justice. A vastly disproportionate sentencing regime for sentences for murder (now that a conviction for murder under the felony murder rule does not automatically result in a mandatory death sentence) and sentences for manslaughter bordering on murder would in all likelihood erode such public confidence: **Archbold 2012**[5]; ***R v. Wood*** [6].

8. Accordingly in ***R v. Wood***[7] it was said that when assessing the seriousness of an offence of manslaughter for which a hospital order was not appropriate, the court should take account of the harm done, as well as of the responsibility of the offender, and that in fixing the actual or notional sentence of imprisonment, it should have regard to Schedule 21 to the Criminal Justice Act ("CJA") 2003 (determination of minimum terms in cases of murder), as a vast disproportion between sentences for murder and sentences for manslaughter bordering on murder would be inimical to the administration of justice. At paras 21 to 24 Lord Judge CJ stated:

> **[21]** There is no express statutory link between the guidance in Sch 21 of the 2003 Act and the principles to be applied to sentencing decisions in diminished responsibility manslaughter. Where diminished responsibility is established it serves to reduce the Defendant's culpability for his actions when doing the killing, but the remaining circumstances of the homicide are unchanged. Specific features of the seriousness of the homicide, for example a double rather than a single killing, or the sadistic killing of a child may be common both to murder and diminished responsibility manslaughter. At the same time the mitigating features expressly identified in Sch 21 extend to what may approximate but not amount to the defence of diminished responsibility and provide an

[4] Archbold 2012 *Criminal Pleading, Evidence and Practice* para 19-81.
[5] ibid.
[6] *R v Wood* (n 2) .
[7] ibid paras 21 to 24.

additional connection between the schedule and the defence. Finally, the culpability of the Defendant in diminished responsibility manslaughter may sometimes be reduced almost to extinction, while in others, it may remain very high. **Accordingly when the sentencing court is assessing the seriousness of the offence with a view to fixing the minimum term, we can discern no logical reason why, subject to the specific element of reduced culpability inherent in the defence, the assessment of the seriousness of the instant offence of diminished responsibility manslaughter should ignore the guidance. Indeed we suggest that the link is plain.**

[22] One of the striking features of Sch 21 is well known but not as yet perhaps fully appreciated. Any of the suggested levels of sentence represent the time actually to the served in custody. A thirty year term is therefore the equivalent of a sixty year determinate sentence, and a fifteen year term equivalent to a thirty year determinate sentence. This reality cannot be ignored, and a vast disproportion between sentences for murder and the sentences for offences of manslaughter which can sometimes come very close to murder would be inimical to the administration of justice. At the lowest, this means that the actual sentences imposed in cases of diminished responsibility manslaughter decided before the 2003 Act came into effect should be treated with utmost caution. The decisions may helpfully point to relevant broad considerations, but the actual sentences themselves no longer provide an accurate guide to the level of minimum term sentences to be imposed now. Although we are grateful to Mr Bishop for his careful, detailed analysis of a variety of sentencing decisions, we are unable to accept the broad thrust of the argument that would lead to a vast reduction from the minimum term imposed by the trial judge after the Appellant was convicted of murder.

[23] We derive some further, indirect support to our approach from the stark reality that the legislature has concluded, dealing with it generally, that the punitive element in sentences for murder should be increased. This coincides with increased levels of sentence for offences resulting in death, such as causing death by dangerous driving and causing death by careless driving. Parliament's intention seems clear: crimes which result

in death should be treated more seriously and dealt with more severely than before. Our conclusion is not governed by, but is consistent with this approach.

[24] As a case of murder, the trial judge assessed the minimum term at 18 years. We have not been invited to, and we see no reason to disagree with this assessment. It carefully reflected the essential features of the case as described in this judgment. The minimum term must now be reduced to allow for the level of reduced culpability consequent on diminished responsibility. We shall not repeat the very grave features which led us to conclude that imprisonment for life is appropriate in this case. Bearing in mind that the protection of the public for the future is secured by the sentence of imprisonment for life, the minimum term should be fixed at 13 years. [**Emphasis Added.]**

9. Thus the sentencing court, in assessing the seriousness of the offence with a view to fixing the minimum term, can, even in the absence of an express statutory link, follow the guidance offered in Schedule 21 of the CJA 2003 (determination of minimum term in relation to mandatory life sentence). Accordingly, depending on the gravity of the offence, the appropriate starting point for an offender 21 and over can be a whole life order where the court considers that the seriousness of the offence is exceptionally high. Schedule 21 as detailed in **Archbold 2012** lists the starting points that follow and suggest that, having chosen a starting point, the court should take into account any of the following aggravating or mitigating factors to the extent that it has not allowed for them in its choice of the starting point **(see Archbold 2012 [8])**:

"Starting points

4.

(1) If -

(a) the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high, and

(b) the offender was aged 21 or over when he committed the offence,

the appropriate starting point is a whole life order.

[8] Archbold (n 4) paras 5-426 to 5-427.

(2) Cases that would normally fall within sub-paragraph (1)(a) include -

(a) the murder of two or more persons, where each murder involves any of the following-

(i) a substantial degree of premeditation or planning,

(ii) the abduction of the victim, or

(iii) sexual or sadistic conduct,

(b) the murder of a child if involving the abduction of the child or sexual or sadistic motivation,

(c) a murder done for the purpose of advancing a political, religious, racial or ideological cause, or

(d) a murder by an offender previously convicted of murder.

5.

(1) If -

(a) the case does not fall within paragraph 4(1) but the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is particularly high, and

(b) the offender was aged 18 or over when he committed the offence,

the appropriate starting point, in determining the minimum term, is 30 years.

(2) Cases that (if not falling within paragraph 4(1)) would normally fall within sub-paragraph (1)(a) include -

(a) the murder of a police officer or prison officer in the course of his duty,

(b) a murder involving the use of a firearm or explosive,

(c) a murder done for gain (such as a murder done in the course or furtherance of robbery or burglary, done for payment or done in the expectation of gain as a result of the death),

(d) a murder intended to obstruct or interfere with the course of justice,

(e) a murder involving sexual or sadistic conduct,

(f) the murder of two or more persons,

(g) a murder that is racially or religiously aggravated or aggravated by sexual orientation, or

(h) a murder falling within paragraph 4(2) committed by an offender who was aged under 21 when he committed the offence.

5A.

(1) If -

(a) the case does not fall within paragraph 4(1) or 5(1),

(b) the offence falls within sub-paragraph (2), and

(c) the offender was aged 18 or over when the offender committed the offence,

the offence is normally to be regarded as sufficiently serious for the appropriate starting point, in determining the minimum term, to be 25 years.

(2) The offence falls within this sub-paragraph if the offender took a knife or other weapon to the scene intending to -

(a) commit any offence, or

(b) have it available to use as a weapon,

and used that knife or other weapon in committing the murder.

6.

If the offender was aged 18 or over when he committed the offence and the case does not fall within paragraph 4(1), 5(1) or 5A(1), the appropriate starting point, in determining the minimum term, is 15 years.

7.

If the offender was aged under 18 when he committed the offence, the appropriate starting point, in determining the minimum term, is 12 years.

Aggravating and mitigating factors

8.

Having chosen a starting point, the court should take into account any aggravating or mitigating factors, to the extent that it has not allowed for them in its choice of starting point.

9.

Detailed consideration of aggravating or mitigating factors may result in a minimum term of any length (whatever the starting point), or in the making of a whole life order.

10.

Aggravating factors (additional to those mentioned in paragraph 4(2), 5(2) and 5A(2)) that may be relevant to the offence of murder include -

(a) a significant degree of planning or premeditation,

(b) the fact that the victim was particularly vulnerable because of age or disability,

(c) mental or physical suffering inflicted on the victim before death,

(d) the abuse of a position of trust,

(e) the use of duress or threats against another person to facilitate the commission of the offence,

(f) the fact that the victim was providing a public service or performing a public duty, and

(g) concealment, destruction or dismemberment of the body.

11.

Mitigating factors that may be relevant to the offence of murder include -

(a) an intention to cause serious bodily harm rather than to kill,

(b) lack of premeditation,

(c) the fact that the offender suffered from any mental disorder or mental disability which (although not falling within section 2(1) of the Homicide Act 1957), lowered his degree of culpability,

(d) the fact that the offender was provoked (for example, by prolonged stress) ... ,

(e) the fact that the offender acted to any extent in self-defence or in fear of violence,

(f) a belief by the offender that the murder was an act of mercy, and

(g) the age of the offender. "

10. It must be emphasized that Schedule 21 of the CJA 2003 (UK) and, indeed, the jurisprudence in this area provides guidance to judges of the UK in determining an appropriate minimum term. However local courts need to guard against the wholesale importation of such minimum terms which are instructive but which may, in our local setting, require modification.

11. It is noteworthy that our Court of Appeal in ***Attin v. The State***[9], following the Barbadian case of ***Scantlebury v. The Queen***[10], provided valuable sentencing guidelines and the review procedure to be undertaken where juveniles are convicted of murder and sentenced to detention during the court's pleasure. In highlighting the factors to be taken into consideration in determining an appropriate minimum sentence in such instances, our Court of Appeal would have incorporated some of the factors set out in my foregoing analysis of the law. However when manslaughter by reason of diminished responsibility is under consideration the additional factors set out in Schedule 21 can prove to be particularly instructive.

12. Distilling the foregoing analysis, in calculating the minimum term, a court would have to begin by determining an appropriate starting point, for example whether it ought to be 10 years, 15 years as the case may be. The court should then go on to consider whether that starting point would have to be increased by the aggravating circumstances and to be reduced by those in mitigation. Thereafter the court should consider the degree of the defendant's responsibility or blameworthiness for the death by reason of his diminished responsibility. Additionally the court would consider, in the event of a plea of guilty, whether it is appropriate to reduce the minimum term. Finally the court would consider, where appropriate, what credit should be given to the defendant for time spent in custody. (See ***R v. Slater***[11]; ***R v. Ahmed***[12] ; **Blackstone's 2011**[13]**.**)

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[9] *Attin v The State* Cr App R No. 29 of 2004 [CA of TT].

[10] *Scantlebury v R* Cr App No. 34 of 2002 [CA of Barbados].

[11] *R v Slater* [2005] EWCA Crim 898 paras 16-20.

[12] *R v Ahmed* [2012] EWCA Crim 708 paras 16-21.

[13] Blackstone's Criminal Practice 2011, Supplement 1, SG6, 153.

13. Conducting the balancing exercise of the kind referred to at para 12 above is not without its difficulties. As Auld LJ cautioned in ***R v. Slater***[14] :

> Assessing the form and severity of sentence in manslaughter cases by reason of diminished responsibility is notoriously difficult. So many factors often contribute to the death: the relationship of the parties one to the other, the strains, if any, imposed upon that relationship, the degree of diminution of the defendant's responsibility or blameworthiness for the death by reason of his or her abnormality of mind, the deliberation or otherwise of the fatal attack and the brutality with which it was conducted, and the defendant's attitude to and/or appreciation of the enormity of what he or she has done. These and other factors invariably call for a balance of considerations between fixing on a disposal that reflects the moderating circumstances and their degree of the offence, differentiating it from murder, and those that identify nevertheless serious culpability, calling for mark by the court of public disapproval and imposition of punishment.

14. It is manifest from his order that Mr. Justice Volney elected not to exercise the sentencing option of life imprisonment nor of a hospital order. Rather he opted for one which would subject the Applicant to his first review after a period of 7 years. In so doing it should be noted that his Lordship did not fix a determinate sentence. Nevertheless I am of the view that his Lordship would undoubtedly have had at the back of his mind that the authorities suggest that the minimum term would usually be the equivalent of a determinate sentence of twice its length: **Practice Statement (Crime: Life Sentences (2002) (UK) para 3**[15]**; Blackstone 2011** [16]**.)** Accordingly I can now go on to examine the evidence.

3. The Facts

15. The Applicant is 57, the fifth of seven children. He had a "hard" (his term), but normal childhood. He attended Primary School up to Standard 4, leaving school to help support his siblings. He never married and continued living at his parents' home up to the time of the

[14] *R v Slater* (n 11) para 16.
[15] Practice Statement (Crime: Life Sentences) (2002) (UK) para 3.
[16] n 13 SG-32 page 176.

commission of this offence. His mother had died a few years before the commission of this offence. However, all six siblings are alive.

16. The Applicant and his brothers took on any odd jobs due to their inability to obtain steady employment. The Applicant would also work in his father's garden when he could not find employment. Between 1983 to 1985 he found work at an onshore rig, but was retrenched. He then returned to gardening with his father and was fully engaged in same with his father to provide food for the family.

17. Around 7 p.m. on December 4, 2000 the Applicant spoke to an acquaintance, Cosmos McBurnett. The Applicant told him "ah come to tell you what I did. Boy ah chop off Willis head." McBurnett asked him, among other things, whether he took out his head clean and the Applicant said no. The Applicant then told him that he was going to a trace in New Gant and if he wanted to meet him he should come in the trace and ask for Willis. Mc Burnett advised him against doing that. The Applicant then said, "you see my father he is king socouyant and the lady on the junction is queen socouyant." McBurnett advised the Applicant to give himself up. The Applicant agreed and around 7.25p.m. he made a report to PC Harper at the Rio Claro Police Station.

18. The Applicant reported to the police that at about 7p.m. he had a dispute with his father at home over money and dealt him a blow with a cutlass. On the arrival of the police at the family home, his father was found in a semi-conscious state lying at the base of the stairs bleeding profusely from his face, mouth, hands and neck. His father died about 5 weeks later on January 8, 2001.

19. The forensic pathologist found multiple (8) healed chop wounds about the body as follows:

1. 4 cm on the left top and back of the scalp with underlying bone fracture.
2. 8 cm over the front of the chin.
3. 15 x 10.5cm in the shape of a Y located over the front of the lower neck and upper chest.
4. 5 cm over the front of the right shoulder.

5. 9cm over the front right side of abdomen.
6. 8 cm over the back of the upper neck.
7. 15cm across the upper back.
8. 8.5 cm over the right side of the lower jaw.

There were also 7 healing injuries of both hands consistent with defensive injuries.

20. The father's history of his stay in hospital revealed that he was admitted to the hospital with multiple chop wounds on December 4, 2000 and had multiple surgeries, but remained comatose and died 35 days post admission. The pathologist opined that this 78-year-old man died of complications from the multiple chop wounds.

21. In his cautionary statement to the police, the Applicant spoke of asking his father for $1,500. However, his father did not give him the sum requested, saying that he did not have any money. His father then gave him $32 which was insufficient for what he wanted to do.
Pausing there, the Consultant Psychiatrist, in his report dated September 10, 200, goes into a little more detail as to the Applicant's request for money. The Applicant sated that he had promised to take a girlfriend to the wedding of his nephew and had asked his father for the money to attend same. His father promised him the money. However, on that fateful day when he asked him for same, his father laughed and made fun of him. He was very disappointed that his father had refused him the money.

A. Dr. Ghany's evaluation.

22. After being charged for his father's murder, the Applicant was admitted to St. Ann's Hospital on April 13, 2001 for a psychiatric evaluation. Dr. Iqbal Ghany, a Consultant Psychiatrist, conducted same.

23. Dr. Ghany first saw the Applicant on August 13, 2001. When asked by Dr. Ghany if he knew why he was admitted to the hospital, the Applicant stated that he would "get blackouts" and "not know himself." With respect to his drug history, the Applicant denied using cocaine

and marijuana, but admitted alcohol use from the age of 15. **Dr. Ghany opined that this would have caused complications such as the development of epileptic seizures, hallucinations and paranoid ideas.**

24. In that regard Dr. Ghany interviewed two of the Applicant's sisters. They stated that he developed Grand mal seizures some years ago, but refused to see a doctor. The family thought he was demon possessed and sought out priests and pastors. His sisters also stated that he would sometimes hear voices and see things. On one occasion he complained that a taxi driver was talking about and following him and that people were watching him. Dr. Ghany saw all of that as psychiatric developments arising out of his drinking.

25. With respect to his personality, his sisters described the Applicant as a slow learner, but one who was kind, gentle, caring, loving and neither aggressive nor threatening to anyone. Psychological testing revealed that his intelligence was in the range of dull normal.

26. Dr. Ghany while declaring the Applicant fit for trial, also expressed the following opinion after his evaluation:

> "This man has a long history of heavy drinking and as a result he developed the complications of epilepsy, hallucinations and paranoia. He himself stated that he did not drink for several weeks before the incident and that he may have had a seizure two weeks before.
>
> It would appear to me that he acted impulsively when he was denied the money and must have got into a rage, when his father attacked him with a cutlass, indicating some degree of provocation. Since he was able to leave the scene to go to the police station to make a report, he does not appear that he had an epileptic attack. It must be mentioned too that being a man of low intelligence, he acted impulsively without thinking."

27. Dr. Ghany again examined the Applicant some 10 years later. The Applicant told him that he was being treated with Tegretol for epilepsy. He stopped the medication on a trial basis resulting in the Applicant having a seizure. He also referred to his September 2001 notes and report. **However, on this admission he found no evidence of psychosis**. He also asked his psychiatric social worker (Rajpaul Sinansingh) to interview the Applicant's family. Sinansingh revealed that to the family was anxious to have the Applicant back home and can provide for his welfare and supervision. Dr. Ghany opined that the Applicant **"is certainly fit for release and will not pose a danger to the public."**

B. Probation Officer's Report

28. A report [October 27, 2001] written by Jason Chattergoon, Probation Officer II concerning the Prisoner states - ..... The Medical doctor at St. Ann's Hospital noted that Mr. Willis suffers from epileptic seizures and as a consequence, he is bound to medication for the duration of his lifetime. The Medical Officer at the St. Ann's Hospital has indicated that Mr. Willis is not suffering from any mental condition and has deemed him "fit for release."

Concerning an interview Chattergoon conducted with the Applicant, at St. Ann's Hospital, he states :

"I took the opportunity to have a brief consultation with officers at the Forensic Division, where Mr. Willis has been for some time. They described Mr. Willis as a very "quite" inmate, who does not retaliate, but opts to excuse himself from any form of violent or threatening situation that may arise. They also informed me that they would, if Mr. Willis is subsequently released, provide the necessary documentation for him to join a Health Centre or Hospital clinic closest to his home to continue his treatment and receive the necessary medication..."

29. Chattergoon also conducted an interview with the Willis family which states...

The family appeared sympathetic about the entire situation, citing that the circumstances surrounding the entire incident went deeper than what actually transpired on the fateful date of January 8, 201, when their father was chopped to death by their brother.

They hold no animosity towards their brother, pointing out that they continued to visit him during his incarceration, and have always assured him that he has a place at home, if ever he was released.

30. On the issue of remorse, Chattergoon stated at page 3 that the Applicant 2 "spoke fondly of his family, recounting that the relationship in the family was "a good one" to the point where he never married or desired to part from the paternal home. He said that he never thought that his father would have died in the way he did and regrets the entire ordeal"

31. Mr. Chattergoon's social enquiries revealed that few residents could recall the Applicant. Of those who knew him, they indicated that engaging in alcohol misuse was his only flaw. None of those interviewed felt as though their safety would be at risk.

32. Concerning the Risk to the Public of Re-Offending Chattergoon states:

> "Releasing the prisoner into his former community details a dual risk estimate; the nature and seriousness of Dunstan further offending and likelihood of it occurring.
>
> Distilled analysis of the previous sections and my professional judgment indicates:
>
> - Prior to this incident, the Applicant had no pattern of offending behaviour
>
> - His record of behaviour at the institution indicates he has the capacity and motivation to change

- Availability of activities to reduce the risk or impact of further offending include, Alcoholic Anonymous meeting and attendance at the family's Christian church."

33. Mr. Chattergoon recommended that

- The said Dunstan Willis do sign his bond (sum to be determined by this court) to keep the peace and be of good behaviour for a period of two (2) years

- The said Dunstan Willis of 19 Daily Road, New Grant to reside with his brother in the family home for a period of one (1) year

- The said Dunstan Willis to be prevented from consuming alcoholic beverages

- The said Dunstan Willis to be tested for drug and alcohol use at the instruction of the Probation Office

- The said Dunstan Willis to be placed under the supervision of a Probation Officer for a period of two (2) years and to report as directed.

C. <u>Prisons Report (July 2011)</u>

34. The Superintendent of Prisons Carrera Convict Prison Ronald Morgan, provided the following report on the Applicant:

As per the incident for which he was incarcerated, while the Applicant accepts he was in a struggle with his father, he continues to blame the hospital authorities for the death of his father. He believes it was the negligence of the hospital staff which caused his father's death, and grapples with the fact that he has been imprisoned for this.

The Applicant is seen as a non-violent person, who does not socialize. He rarely associates with other inmates, except for recreation – specifically for cricket. He lacks socializing skills, and this may stem from a distrust of other inmates. He has not participated in any rehabilitation programmes at Carrera, although encouraged by Prison staff to do so. Means of assistance are available at all levels of programmes within the Prison, but he continues to resist all efforts of learning since he has not adjusted himself to prison life.

During his incarceration he communicated regularly with his family and friends via letters and visits, as per his entitlement. Should he be released, the Applicant has said that his brother and sister assured him that he would be welcomed back home, and he will resume planting in the garden to make ends meet.

The Applicant's conduct was assessed as excellent, and he is classified as a star convict/low-risk level inmate. For the period under review, the Prisoner has no infractions against Prisons Rules and Regulations.

D. Aggravating Factors

35. The aggravating factors include:

1. Unarguably the seriousness of the offence, his father suffering severe injuries to his neck, face and upper body.

2. His father was an old man, 73 years old at the time.

3. On occasions he appears not to have accepted complete responsibility for his father's death, but blames the hospital authorities for same. However, the Probation Officer, as recently as July 2011, does recount that the Applicant is remorseful (see page 3 of Report).

I hold that the latter account does suggest remorse.

E. Mitigating Factors

36. The mitigating factors in the instant case include:

1. The Applicant is now 57 and admirably is a man of good character with no previous convictions.

2. He has been in custody since January 2001 (approximately 11½ years).

3. He has pleaded guilty to manslaughter on the ground of diminished responsibility at an early stage in the proceedings (2004). Thus valuable judicial time and money have been saved.

4. At the time of the incident the Applicant had a long history of heavy drinking and, as a result, suffered from the complications of epilepsy, hallucinations and paranoia. His psychological testing revealed that his intelligence is in the range of dull normal.

5. There was a lack of premeditation. The incident flared up after the Applicant's father mocked him over money which his father promised him sometime earlier for the purpose of taking a girlfriend to his nephew's wedding. Further the Applicant reacted impulsively to what he perceived to be an attack or an act of provocation against him by his father who was armed with a weapon. Moreover the violence was completely out of character. See for example R v Derekis.[17]

[17] *R v Derekis* [2004] EWCA Crim 2729 paras 16-21.

6. The Applicant, immediately after inflicting what later turned out to be fatal injuries, made a report of the police.

7. While incarcerated the Applicant's conduct has been assessed as excellent and has been classified as a star convict/low risk level inmate. However it should be noted that he has not participated in any rehabilitation programmes in the prison. He also lacks socialising skills, preferring to keep to himself, although this seemed to stem from a lack of trust of other inmates.

8. As recently as July 2011, Dr. Ghany found no evidence of psychosis and was of the opinion that the Applicant is fit for release and will not pose a danger to the public.

9. Notwithstanding that he killed his father, he has the complete support of his siblings which would assist with his re-integration into society. Further he will reside at the family home and can begin earning an income immediately by continuing with his gardening.

10. Further the Applicant with full knowledge of the recommendations of the Probation Officer, is willing to abide by an orders.

4. Disposition

37. As the foregoing analysis reveals, where diminished responsibility is established, it serves to reduce the defendant's culpability for his actions when doing the killing, but the remaining circumstances of the homicide are unchanged: ***R v. Wood***[18]. In the instant case the trial judge, even without expressly stating same, must have had due regard to aggravation, mitigation, diminished responsibility, the plea of guilty and the length of time the Applicant had already spent in custody in assessing the minimum period as 7 years. At this first review the Consultant

[18] R v Wood (n2) para 21.

Psychiatrist has, on recent examination of the Applicant, found no evidence of psychosis, which is starkly different from what obtained at the earlier evaluation in 2001. Admirably, his conduct during his incarceration for the period of 11 1/2 years can be regarded as exemplary. Significantly the Consultant Psychiatrist confirms that he does not pose a danger to society and is fit for release. However, bearing in mind that the Applicant's heavy drinking had led to complications of epilepsy, hallucinations and paranoia, the court is of the view that the Applicant needs to be monitored for a period of time to address this underlying issue. In that regard the recommendations of the Probation Officer are of great assistance to me in fashioning an appropriate order. Additionally the court, in its overarching duty to protect the public, must ensure, in the unlikely event that there are breaches of the law, that there are appropriate sanctions in place for same.

38. Giving due consideration to all the circumstances, I am of the view that the Applicant should be released forthwith. The Court of Appeal adopted similar positions in cases involving diminished responsibility in *George Moore v The State*[19] (imprisonment for some 16 years, 9 of those spent on death row) and *Alston Roberts v The State*[20] (imprisonment for 9 years, approximately 7 spent on death row) where they held that the appellants posed little or no threat to society and that little or no purpose would be served in prolonging their period of incarceration. However in another case of diminished responsibility, *Harrilal v The State*[21] (imprisonment for a period of 15 ½ years with 8 years and 3 months spent in the condemned cells), where the appellant was always cooperative, showed no penchant for violence and did not pose a threat to other members of the society, the Court of Appeal thought it fit, having regard to the brutality of the murder, that the appellant should serve a further term of 5 years with hard labour. Accordingly I make the following orders:

1. Dunstan Willis is to sign his own bond in the sum of $5000 to keep the peace and be of good behaviour for a period of 3 years, in default whereof he is to serve a term of imprisonment of 2 years with hard labour.

[19] *George Moore v The State* Cr App No. 61 of 1993 (CA of TT).
[20] *Alston Roberts v The State* Cr App No. 39 of 1999 (CA of TT).
[21] *Harrilal v The State* Cr App No. 46 of 1996 (CA of TT).

2. The said Dunstan Willis is to be placed under the supervision of a Probation Officer, San Fernando, for a period of three (3) years from today's date (August 21, 2012) and is to report as directed.

3. During the period of 3 years as set out at para 2 above, the Applicant is to submit to random alcohol testing at such times and in such manner as the Probation Officer shall see fit.

4. The said Dunstan Willis is to attend counselling sessions at Alcoholics Anonymous for such period as a Probation Officer thinks fit.

5. The said Dunstan Willis is to reside with his brother, Egbert Willis, in the family home at No. 19 Daily Road, New Grant for a period of one year.

6. The said Dunstan Willis is to return to Court within one year from today's date, namely on July 15, 2013 for a status report on his conduct and progress, such report to be prepared by a Probation Officer.

7. The said Dunstan Willis is to be released forthwith.

Dated this 21st day of August, 2012.

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PRAKASH MOOSAI

JUDGE