

**IN THE SUPREME COURT OF BELIZE, A.D. 2019
CRIMINAL JURISDICTION**

SOUTHERN DISTRICT – STANN CREEK

CASE No. RE20190017C

THE QUEEN

v

ORLANDO WADE

BEFORE: Hon. Justice Mr. Francis M. Cumberbatch

APPEARANCES: Ms. Jacqueline Willoughby, Counsel for the Crown
Mr. Arthur Saldivar – Counsel for the Accused

RESENTENCING DATE: 16th April, 2019

JUDGMENT ON SENTENCING

[1] The convicted man was indicted by the Director of Public Prosecutions for the murder of Doria Louise Slusher aka Doria Pitterson ('the Deceased') between the 23rd and 24th of June, 2008, at Sandhill Village, in the Belize District. To that indictment he entered a plea of not guilty and after a fully contested trial he was convicted for the said offence of murder. He was sentenced by the learned trial judge to a sentence of life imprisonment. On appeal to the Court of Appeal, the conviction and sentence were affirmed.

[2] On the 29th day of March, 2018, the Caribbean Court of Justice (“CCJ”) made the following ruling in *Gregory August & Alwin Gibb v R CCJ APPEAL NOS BZCR2015/001 and BZCR2015/002*:

“1. In order to comply with the CCJ ruling in Gregory August & Alwin Gabb v R CCJ APPEAL NOS. BZCR2015/001 and BZCR2015/002, all persons sentenced to life imprisonment must have their sentences reviewed so as to address the issue of a “judicially determined sentence” and the possibility of parole. It is stated at paragraph 126:

“[126] Since the sentences of these persons have been vacated by this judgment, as a practical interim measure, we order that all such persons must remain incarcerated until, in relation to his or her case, respectively, a sentencing hearing is completed. In the event, that the sentencing judge should decide that a fit sentence is one of life imprisonment, then the judge shall stipulate a minimum period which the offender shall serve before becoming eligible for parole, or for a consideration of whether the prisoner has become eligible for parole. We would not expect that

exercise to be rushed, but the entire exercise should be completed within a reasonable time. For the avoidance of doubt, a similar reasoning is to be applied to any person sentenced under the new regime to a mandatory life sentence for murder.”

- [3] In keeping with the mandate of the CCJ aforesaid the court conducted a re-sentencing hearing of the convicted man.

The Facts

- [4] The Court will rely on the facts as disclosed in the judgment of Morrison JA in the judgment of the Court of Appeal.
- [5] On the night of June 23rd, 2008, one Mr. Rosales who was a resident of the Sand Hill area lived in premises opposite to a place named Sylvia’s Cool Spot retired to bed at around 9.00 p.m. He was awoken at around midnight by the sound of screams coming from the area of Sylvia’s Cool Spot. He went back to bed but 10 to 15 minutes later he heard the screams again. As a result he decided to go across to Sylvia’s Cool Spot. There between two board buildings he saw a lady on the ground and the convicted man sitting on top of her. Upon seeing the convicted man on top of the lady he enquired from him saying “Bwoy, da weh yu di do dat lady?” The convicted man

responded, “If I know weh good fi myself go from deh”. The lady was someone he knew as Ms. Doria, the Deceased. The convicted man was beating the Deceased whilst still sitting on top of her so Rosales left the scene and returned to bed.

[6] The following day he saw the convicted man again and asked him what he did to the lady last night to which the convicted man said, “ah kill the bitch” and further told him if he doesn’t believe him go and look in the well. As a result, Rosales returned to the Sylvia’s Cool Spot and went to the spot to which he was directed by the convicted man. There he saw a cardboard box, an umbrella, and three toes pushing out above the umbrella. He immediately called 911 and made a report to the police.

[7] The cause of death of the Deceased was found by Dr. Estrada Bran to be manual strangulation. The doctor also found during the post mortem examination an irregular ligature mark around the neck caused by rope or wire or something placed around the neck to produce pressure on the area above the thyroid cartilage. He found bruises on the surfaces of the muscles running laterally up to the sternum and collarbone which are indicative of strong or heavy force applied to the ligature and as a consequence to the neck. There were also multiple bruises to the inner areas of the thigh close to the vagina as well as on the inner area of the left knee. These bruises were

characterized by pressure being applied to the area to attempt carnal penetration or molestation. There were also bruises to the face which could have been caused by a blunt object such as a fist or direct contact with some other surface. The doctor took oral, vaginal, and rectal swabs, which were taken to the forensic lab for analysis.

[8] The forensic analyst testified that semen was detected on the vaginal and rectal swabs and human blood of the type of the Deceased was discovered on the vaginal, oral, and rectal swabs.

The Hearing

[9] The Court received a social inquiry report on the convicted man. I also received a report from the psychiatrist and the Kolbe Foundation. Counsel for the convicted man also produced affidavits from his relatives. Crown Counsel and the convicted man also filed written submissions together with authorities on which they relied.

[10] The psychiatric evaluation discloses that the convicted man was previously diagnosed as having an unspecified depressive episode. He is currently without active symptoms of depression. He did not display any signs of psychosis.

[11] The social inquiry report discloses the content of interviews with family members of the convicted man. He is described as being a hard worker

during his teenage and adult years before being incarcerated. They further state that the convicted man has not had the benefit of fatherly love but he had tremendous respect for women. They believe that as a user of narcotic drugs he was under the influence of drugs when he committed this offence. However, the report discloses that the convicted man still maintains that he did not commit this offence.

- [12] The report from The Kolbe Foundation listed the various violations of prison rules committed by the convicted man whilst an inmate at that institution. These violations range from acts of violence, damage to property, and acts on indiscipline.

The Law

- [13] A convenient starting point would be to examine the classical principles of sentencing, namely: Retribution, deterrence, prevention and rehabilitation. They were laid down by Lawson LJ in the celebrated case of *R v James Henry Sergeant 1974 60 Cr. App. R. 74*. In that decision Lawson LJ stated that, “*any judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts of the case to see which of them has the greatest importance in the case with which he is dealing.*”

Retribution

- [14] The facts disclose that the Deceased was subjected to physical abuse by the convicted man who persisted in what he was doing notwithstanding the intervention by the witness. The evidence of Dr. Estrada Bran discloses the injuries to the face and body of the Deceased. There is also evidence of possible sexual molestation per vaginam and per anum. In the words of Lawson LJ “... *society through the courts, must show its abhorrence of particular types of crimes, and the only way the courts can show this is by the sentences they pass.*”

Deterrence

- [15] The convicted man is a first offender; hence, at first blush it may be considered that this principle ought not to be applied against him. However, the seriousness of the offence committed cannot be trivialized and it is common ground that the prevalence of this offence has become a matter of national concern. Thus, I find that the fact of the convicted man being a first offender ought not to be good and sufficient reason not to apply this principle not only to deter the convicted man but also to members of the society who contemplate committing this type of offence.

Prevention

[16] There is evidence that the convicted man was known to be an abuser of narcotic drugs. His family members have opined in their affidavits that he committed this offence whilst under the influence of drugs. He has, however, undergone counseling for drug addiction.

[17] Prior to this conviction there is no evidence that the convicted man was considered to be a danger to the society. Accordingly, I find that the imposition of an indeterminate sentence is not necessary here.

Rehabilitation

[18] The convicted man has spoken of attending counseling sessions and is involved in construction at the prison. He has the support of family members and there is every likelihood of him being able to rehabilitate himself.

[19] The Court has two concerns, however, the first being denial of involvement in the commission of this offence even though his family members accept that he committed the acts causing the death of the Deceased. They attribute his denial to him being under the influence of drugs aforesaid. The second concern is his drug addiction. Whilst there is no evidence that he has continued to use and abuse dangerous drugs since his incarceration the Court

accepts that this conduct is due to the fact of him being within the environment of a controlled institution.

[20] Thus, there is need for continued counseling as notwithstanding the progress which he appears to have made in prison. There are issues in his attitude towards women which will have to be addressed and resolved to the satisfaction of the prison authorities before his release into the community can be considered. I am reminded of his utterances to the witness “ah kill di bitch.”

[21] I will now consider the aggravating and mitigating factors herein:

[22] **Aggravating Factors**

- i. The heinousness of the offence;
- ii. The absence of remorse;
- iii. The convicted man has not taken responsibility for his actions.

[23] **Mitigating Factors**

- i. The convicted man’s hitherto clean criminal record;
- ii. The progress made by him whilst on remand to rehabilitate himself;
- iii. The violations of the convicted man’s constitutional rights.

[24] I consider the *dictum* of Rawlins JA (as he then was) in ***Harry Wilson v Regina No. 30 of 2004*** to be instructive as to the manner in which I must consider and balance these factors. In that decision Rawlins J.A. stated:

“17. *It is a mandatory requirement in murder cases for a Judge to take into account the personal and individual circumstances of the convicted person. The Judge must also take into account the nature and gravity of the offence; the character and record of the convicted person; the factors that might have influenced the conduct that caused the murder; the design and execution of the offence, and the possibility of reform and social re-adaptation of the convicted person. The death sentence should only be imposed in those exceptional cases where there is no reasonable prospect of reform and the object of punishment would not be achieved by any other means. The sentencing Judge is fixed with a very onerous duty to pay due regard to all of these factors.*

18. *In summary, the sentencing Judge is required to consider, fully two fundamental factors. On the one hand, the Judge must consider the facts and circumstances that surround the commission of the offence. On the other hand, the Judge must*

consider the character and record of the convicted person. The Judge may accord greater importance to the circumstances, which relate to the commission of the offence. However, the relative importance of these two factors may vary according to the overall circumstances of each case.”

[25] The *dictum* of Rawlins, J.A. aforesaid was approved by the Board in the decision of *Leslie Pipersburg et al v The Queen Privy Council Appeal No. 96 of 2006* from the Court of Appeal of Belize. In that decision Lord Roger of Earlsferry, who delivered the decision of the Board added at paragraph 33:

“It is the need to consider the personal and individual circumstances of the convicted person and, in particular, the possibility of his reform and social re-adaptation which makes the social inquiry and psychiatric reports necessary for all such sentencing hearings.”

[26] I have carefully considered and applied the *dictum* of Rawlings JA (as he then was) and find that the aggravating factors outweigh the mitigating factors.

Sentence

[27] It is common ground that the convicted man was the victim of constitutional breaches, namely, that he was forced to wait for an inordinately long period

of time before he was afforded an opportunity to address the court in mitigation of sentence.

[28] What however is of concern is the fact that the convicted man was required to spend an inordinately long period of time through no fault of his own awaiting sentence. He is entitled to the benefit of rights set out in the Constitution, that is, the right to a fair hearing within a reasonable time. It is trite that notwithstanding his conviction his hearing is incomplete without the imposition of an appropriate sentence.

[29] This has been a most brutal offence with devastating consequences to the victim. The convicted man beat and abused the Deceased and at the end of the torment left her battered body in an old septic hole where it was later retrieved by the police. His callous regard for the sanctity of a human life was further exemplified by his utterance “ah kill the bitch.”

[30] In *R v Howells (1999) 1 ALL ER 50- 54* Lord Bingham CJ as he then was opined thus:

“Courts should always bear in mind that criminal sentences are in almost every case intended to protect the public, whether by punishing the offender, or reforming him, or deterring him and others, or all of these things. Courts cannot and should not be unmindful of the

important public dimension of criminal sentencing and the importance of maintaining public confidence in the sentencing system.”

[31] I have considered the aggravating and mitigating factors herein and have applied the principles of law enunciated by Rawlings JA. I have taken into consideration the constitutional breaches suffered by the convicted man. I accept the reports of the conduct of the convicted man and the progress shown by him since his incarceration. I am not unmindful, however of the fact that the improvements made by him have taken place whilst he was in a controlled environment and has very little opportunity to exercise his own judgment in his day to day activities.

[32] I have examined the sworn statements of the character witnesses submitted on behalf of the convicted man. The averments contained therein are unchallenged as the affiants were not requested to be present for cross-examination. I have particularly noted the expressions of support stated therein.

[33] A life has been lost in circumstances which were both brutal and heinous. He has not expressed remorse and for this the convicted man must be punished by the imposition of a sentence commensurate with his culpability.

[34] Accordingly, the convicted man is sentenced to life imprisonment with eligibility for parole after 25 years with effect from the 26th day of June, 2008.

Dated this **Tuesday 16th of April, 2019.**

Honourable Justice Mr. Francis M. Cumberbatch
Justice of the Supreme Court