IN THE COURT OF APPEAL OF BELIZE AD 2021

CRIMINAL APPEAL NO. 8 OF 2017

BERT VASQUEZ **Appellant**

V

THE QUEEN **Respondent**

BEFORE:

The Hon Madam Justice Minnet Hafiz Bertram **President (Ag)**

The Hon Madam Justice Sandra Minott-Phillips **Justice of Appeal**

The Hon Mr. Justice Peter Foster **Justice of Appeal**

Appearances:

Ms Michelle E Trapp for the Applicant/Appellant

Ms Cheryl-Lynn Vidal SC for the Respondent

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7 October and 26 November 2021

REASONS FOR JUDGMENT

HAFIZ BERTRAM P (Ag)

Introduction

[1] The Applicant/Appellant, Bert Vasquez ('Vasquez') was convicted of forcible abduction and aggravated assault of an indecent nature in the Supreme Court, before Lucas J. On 10 July 2017, a jury of 9 unanimously found him guilty of those offences. Vasquez was sentenced to imprisonment for a term of 10 years for the offence of forcible abduction and 3 years for the offence of aggravated assault of an indecent nature. The sentences were ordered to run concurrently, as of the date of imposition.

[2] Vasquez filed a "NOTICE OF APPEAL OR APPLICATION FOR LEAVE TO APPEAL" against both his conviction (12 July 2017) and his conviction and sentence (2 August 2017). Vasquez was required to obtain leave from the Court pursuant to section 23(1) of the Court of Appeal Act, Chapter 90 ('the Act') to appeal his sentence.

[3] Ms. Trapp pursued a single ground of appeal on the sentences. The sole ground of appeal was whether the sentences were manifestly excessive and goes against the aims of sentencing given that it was passed without a plea in mitigation on behalf of Vasquez, who had declined to do so.

[4] This Court considered the application for leave to appeal the sentence and dismissed it on the basis that the sentences passed by the trial judge were not manifestly excessive or wrong in principle, although there was no plea in mitigation mitigation presented on behalf of Vasquez. The sentences, running concurrently, were affirmed. These are our reasons for doing so.

Factual Background

[5] On 13 May 2011, at about 8.00 pm, the complainant who was 16 years old was waiting to take a bus in the vicinity of the Pound Yard Bridge, to her home in the

Ladyville, Belize District. She was there for about 10 minutes when Vasquez pulled up in a car that he was driving and asked her if the bus had left already. She nodded 'yes' because the earlier bus had gone, and she was waiting for the next available bus. The evidence of the complainant was that Vasquez then got out of his car and stood beside her. Shortly afterwards, he placed something to her side. The complainant said that she knew it was a gun because it was covered with a shirt which Vasquez had in his hand. She was shocked and scared at that moment. He then ordered her to go into his vehicle. Her evidence is that he told her "*walk with me; don't scream or I'll shoot you"*, so she walked with him because she was scared. When she was in in the vehicle, he ordered her to put her head between her legs and her arms out towards the dashboard. The car window where she was seated was quarter way down and he ordered her to put up the window. When she refused, he hit her in the face.

[6] Vasquez then drove to Ladyville and he turned right by a sign which said 'Manatee Lookout'. The complainant testified that when he turned, she knew that he was taking her to Vista del Mar by the seaside and she knew she was going to die. She started screaming but no one could hear her. When Vasquez stopped the car in a dark area, close to the sea, he choked the complainant who was still screaming. He then proceeded to take off her clothes and she fought him but, she was overpowered by Vasquez who punched her in the face and hit her with the gun. The complainant stopped fighting when she thought she would become unconscious. At this time, she was ordered to take off her shirt, which she did, and Vasquez unbuttoned her pants and touched her breasts and vagina. The complainant begged him *"please don't do this to me"* and *"you don't want to rape me"* as she has AIDS. He then threatened to kill her because she was of no use to him. But immediately thereafter, Vasquez pushed back his car seat, unzipped his pants and forced her to do oral sex on him. The complainant said this ordeal lasted about five minutes and Vasquez pulled her hair and forced his penis into her throat. As this was going on she was forced to tell him that she loved him. He ejaculated in her mouth.

[7] Vasquez then pulled his gun and pointed it to the Complainant's head. He pulled the trigger and she heard a click in her ear. He then cleaned himself and used a flashlight to look at himself in the mirror. When he saw scratches on his face, he showed the

complainant what she did to him. Vasquez then drove out from the area and ordered her to pick up all her things. He then ordered her to get out of his vehicle and run. When the complainant heard the word 'run', she ran and hid on the side of the road for about five minutes as she was afraid, he would pick her up again. At that time, she did not have on her shirt and was still bleeding from her face. The Complainant kept walking until she saw a car driving towards her, which stopped. A lady was in the car and a man was driving. She was assisted by them, and they took her to someone she knew. That other person then took her to the Ladyville Police Station where she made a report of the incident.

[8] Vasquez was subsequently charged for three offences and found guilty on the two offences shown above.

[9] Vasquez gave an unsworn statement at trial and his defence was a bare denial. He stated that he had never met and had never seen the complainant. That he saw her for the first time in the courtroom.

[10] Vasquez appealed his sentences of 10 years for forcible abduction and 3 years for aggravated assault of an indecent nature, running concurrently.

The relevant statutory provisions

[11] Vasquez was sentenced to 10 years imprisonment for the offence of forcible abduction. The maximum sentence for this offence is 13 years. Section 57 of the Criminal Code, Chapter 101 ('the Criminal Code'), provides that:

> "57. Every person who takes away or detains against her will a female of any age with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person, shall be liable to imprisonment for **thirteen years**."

[12] Vasquez was sentenced to the maximum of 3 years imprisonment for the offence of aggravated assault of an indecent nature. Section 45 of the Criminal Code provides:

"45. Every person who commits an unlawful assault of any of the following kinds, namely-

……..

(f) indecent assault on any person, whether male or female;

…….

shall be guilty of an aggravated assault and, on conviction 0thereof, be liable to imprisonment for two years:

Provided that in respect of an **indecent assault** upon a female or an aggravated assault upon any male child or any female, a person convicted under this section shall be liable to imprisonment for **three years instead of two years.**

Aims of sentencing principles

[13] In **R v Sargeant** [1974] 60 Cr App R 74, Lawton LJ, stated that the four main aims of sentencing were retribution, deterrence, prevention and rehabilitation. In **Renaldo Anderson Alleyne v The Queen** [2019] CCJ 06 (AJ), the Court stated that a more modern formulation would be content only to reference **punishment, deterrence and rehabilitation.**

[14] Ms. Trapp relied on rehabilitation in her arguments because of there being no mitigation factors in favour of Vasquez. This is so despite insistence by the trial judge over and over again for mitigation to be done. Vasquez gave no reason in the court below for refusing to address the learned trial judge in mitigation of sentence.

Whether the sentence was manifestly excessive

Submissions for Vasquez

[15] Learned counsel, Ms. Trapp submitted that the sentence is manifestly excessive and goes against the aims of sentencing because it was passed without a plea in mitigation. Counsel referred to the remarks of the learned trial judge, who stated that Mr.

Oscar Selgado, who was defence counsel for Vasquez, declined to plea any mitigation on behalf of Vasquez. Further, when the Judge enquired from Vasquez if he was in agreement with his attorney's position, he replied that he was. (The transcript shows that this is indeed the position). Counsel submitted that the judge then stated that there was nothing before him which he could take into consideration as a mitigating factor(s).

[16] Counsel contended that since there was no mitigation, the aims of sentencing had not been fully met. She relied on the case of **Rowe Gentles, Jason Mills, Michael Patterson and Paul Gayle v R** [2017] JMCA Crim 2, where the President of the Court of Appeal, stated at paragraphs 9 and 16:

> "[9] Mr Harrison referred us finally to two well-known decisions of this court. The first is **R v Cecil Gibson** (1975) 13 JLR 207, 211-212, in which Graham-Perkins JA observed that:
>
> > "... it should never at any time be thought that a convicted person standing in a dock is no more than an abstraction. He is what he is because of his antecedents and justice can only be done to him if proper and due regard is had to him as an individual, and a real attempt is made to deal with him with reference to the circumstances of his case. To ignore these is to ignore an essential consideration in the purpose of punishment, namely, the rehabilitation of the offender.
> >
> > …….
> >
> > [16] Therefore, in arriving at the appropriate sentence to be imposed on the applicant in this case, it was necessary for the judge to consider, firstly the individual circumstances of each of them. While the judge did say that he had "looked at" the social enquiry reports, and that he had "also noted that the comments by members of their community [are] in most instances favourable", it is an unfortunate feature of the case that there is no indication from his sentencing remarks what <u>weight</u> he gave to this material in relation to each applicant. But, that having been said, it is clear that the judge did attempt to differentiate between the applicant Patterson, and the other applicants, on the basis which Mr Hines quite properly acknowledged (see para. [13] above)."

[17] Vasquez, through his current counsel, Ms Trapp, ascribed fault to his counsel at trial, Mr Selgado, for not making a plea in mitigation on his behalf. She also faulted the trial judge for not enquiring whether he understood the meaning of 'mitigation' and, if it turned out he did not, for not explaining to him the significance of mitigation. Ms Trapp relied on the case of **Paul Lashley, John Campayne v Det. Cpl. 17995 Winston Singh** [2014] CCJ 11 (AJ), paragraph 11 where the Honourable Justices Nelson, Saunders and Hayton discussed the incompetence of counsel and the principles of fairness and due process.

[18] Learned counsel, also relied on the case of **Harrim Perez v The Queen**, Criminal Appeal No. 18 of 2012, where this Court upheld a sentence of 8 years for rape. She relied further on other cases discussed in **Perez.** These are (1) **Harry William and Alfonso Gilharry v R**, Criminal Appeal Nos 10 and 11 of 1976, in which both appellants were convicted of rape and sentenced to a term of 7 years, and (2) **Eli Kerr v R**, Criminal Appeal No. 11 of 1985, where the sentence was 7 years for attempted rape in respect of his first conviction and 8 years in respect of his second conviction.

Director's submissions

[19] The learned Director opposed the application for leave to appeal the sentences imposed by the trial judge. Senior counsel contended that the sentences of 10 years and 3 years, running concurrently, are commensurate with Vasquez's criminal conduct and are not excessive. She referred the Court to (a) the remarks made by the trial judge when he delivered his decision in relation to the sentence; (b) Vasquez's defence being a bare denial; and (c) Vasquez offering no plea in mitigation and not expressing remorse.

[20] Senior counsel further referred the Court to the legislative provisions for each of the offences. She submitted on the difficulty to propose an established range of sentences for the offence of forcible abduction applicable to the instant case as there had been few prosecutions for the offence and fewer sentences for the offence which have engaged this Court. She referred the Court to the case of **John James Rivas** and **John Wiltshire v The Queen**, Criminal Appeals Nos. 2 and 3 of 1989, which the Prosecutor had

presented to Lucas J at the trial, in relation to sentences for forcible abduction. Both appellants were convicted of rape and forcible abduction. On appeal, both appeals were allowed and the convictions quashed and the sentences set aside. The sentences of 7 years for Rivas and 8 years for Wiltshire were not commented on by this Court.

[21] The learned Director also addressed the case of **Williams and Gilharry** which was discussed in the **Perez** rape case. In that 1976 case, almost 45 years old, both appellants had been convicted of rape and forcible abduction. They had been sentenced to 3 years for forcible abduction 'at hard labour'. The sentences were to run consecutively.

[22] The Director further submitted that the case of **Perez** and the cases mentioned in that judgment, do not assist to show that the sentences in the instant matter are manifestly excessive, given the present circumstances.

[23] Learned counsel referred the Court to two other cases on forcible abduction. In the case of **Ewart Roberts and Eugene Bonell v The Queen**, Criminal Appeal Nos 11 and 12 of 1983, (38 years old) the convictions of the appellants had been quashed and the sentences set aside. The sentences imposed were not mentioned in the judgment. In the other case, **Albert Guy v The Queen,** Criminal Appeal No. 8 of 2004 (17 years old), a sentence of 8 years had been imposed on Guy upon his conviction for the offence of forcible abduction. On appeal, Guy's conviction was quashed by this Court and the sentence set aside.

[24] It was contended by the Director that in the absence of an average sentence, Lucas J focused on the maximum penalty established by law for the offences and sought to impose a sentence commensurate with the conduct of Vasquez within the parameter set by the law.

Discussion

The absence of mitigating factors

[25] The argument for Vasquez was that the sentences imposed were manifestly excessive and goes against the aims of sentencing since there was no plea in mitigation. The principle in **Gentles et al** shows that a Judge is required to give due regard to a convict as an individual and for him to be dealt with reference to the circumstances of his case. "*To ignore these is to ignore an essential consideration in the purpose of punishment, namely, the rehabilitation of the offender*." The Court agrees that the individual circumstance of a convict is an essential consideration. However, this can only be done if the evidence is available before the sentencing judge. In the instant case, Vasquez refused to make a plea in mitigation. There is no indication from what transpired at sentencing that Vasquez did not understand the meaning of mitigation. Indeed Vasquez was ably represented by experienced counsel who we must accept advised and received instructions from his client. The judge was in no position to force learned counsel or Vasquez to present a plea in mitigation to the court. That argument is therefore rejected by the Court. Lucas J did not ignore any mitigating factors. There were none. The case of **Gentles et al** can be distinguished from the instant case as the judge had social enquiry reports which were read but there was no indication in his sentencing remarks what weight he gave to that material. Lucas J in the instant case had no mitigating factors to consider notwithstanding his repeated invitations to Vasquez to put such material before the court for his consideration prior to sentence being imposed.

[26] Learned counsel, Ms. Trapp, relied on the case of **Lashley,** where the Caribbean Court of Justice stated that it was guided by the principles of fairness and due process and not the degree of incompetence of counsel. In the present case, Mr. Selgado, acted upon instructions given to him by Vasquez.

[27] Mitigation is only one factor in relation to sentencing and it had not been established by Vasquez how mitigation would have caused his sentences, running concurrently, to be reduced. On 21 July 2017, Vasquez was found guilty of two offences. The trial judge

then adjourned the case to 21 July 2017 for sentencing. This is not a case where there were mitigating factors and the learned trial judge ignored them. In fact, the judge's concern was such that he enquired from counsel, and Vasquez himself, several times about mitigation. The following exchanges took place before sentencing:

"MR. SELGADO: "May it please you, my Lord. My Lord, the Defence will not be offering no mitigation as has previously indicated.

THE COURT: Just to clarify, what you previously indicated?

MR. SELGADO: That we won't be offering mitigation on behalf of Mr. Vasquez, My Lord.

THE COURT: The Convict. You heard your Lawyer, you agree with that?

Convict: Yes. My Lord.

[28] Justice Lucas after some discussion with both counsel indicated that he would adjourn sentencing so that Mr. Selgado and Vasquez have ample time to look at the Victim Impact Statement. Mr Selgado then informed the Court that:

> "My Lord, I am not arrogant, but I have taken certain instructions from my client and …
>
> I do not require the adjournment, My Lord. That I trust that the Court will exercise its judicial discretion in making its determination as to what sentence is appropriate in the circumstances at hand."

[29] The Judge was obviously satisfied that Vasquez did not want to make a plea in mitigation. Further, the transcript of the proceedings in the court below showed that the judge did not consider that Vasquez had a previous conviction for aggravated assault. He stated that it was spent, a fact which went in Vasquez's favour. Further, in this matter there was **no guilty plea** and also there was a **lack of remorse** as stated by the trial judge. Ms. Trapp in the appeal was hard-pressed to point this Court to any mitigating factors such as would outweigh the aggravating factors in the present case, or at all.

[30] It is to be noted that the trial judge gave Vasquez full credit for his pre-trial custody as stated in **Romeo da Costa Hall v R.**

The rehabilitation point

[31] It was the opinion of the Court, that Mr Vasquez had not established that his rehabilitation potential had been adversely affected by the absence of a plea in mitigation by him, as was submitted by counsel on his behalf. Rehabilitation is one of the aims of sentencing but certainly not the only one. This is shown in the case of **Renaldo Anderson Alleyne v The Queen** [2019] CCJ 06 (AJ), relied upon by the Director, where the Court said at para 45:

> "…Rehabilitation is one of the aims of sentencing and a very important aim, but not the only one and in some circumstances, not the overriding one. The classical principles of sentencing reference three others: retribution, punishment, deterrence; a more modern formulation would be content only to reference **punishment, deterrence and rehabilitation**."

[32] In the circumstances of this case, the depraved nature of the crime committed on a minor at gunpoint, rehabilitation, though important, would not, in the view of the Court, be the overriding aim.

Victim Impact Statement and enquiry again about mitigation

[33] At the sentencing hearing, the trial judge heard from the complainant as to how the offences committed on her by Vasquez, affected her.

[34] Mr. Selgado informed the trial judge that there would be no cross-examination on the victim impact statement. Once again, the trial judged enquired of Mr. Selgado: "…*you said the last time, you have nothing to say in mitigation.*" He replied: "*That remains my position today, My Lord*." The judge then addressed Vasquez:

> "The last time I pose the question to you when your Counsel said he will offer no mitigation and you said you agree with the Counsel. I am asking

you again, you agree with your Counsel that there will be no mitigation made on your behalf?"

Vasquez then replied: "No mitigation my Lord." The trial judge asked Vasquez again, "You agree that no mitigation? He replied, "Yes, My Lord, I agree."

[35] This Court was satisfied that Vasquez understood the meaning of mitigation and declined to make a plea in mitigation for reasons not disclosed to the trial judge.

Considerations by the trial judge before sentencing

(i) Factual circumstances

[36] The judge summarized the evidence presented by the Crown in his remarks at the sentencing hearing. He stated how the complainant was approached by Vasquez and forced at gun point into his car and the ordeal she endured in his car. This evidence is as stated in the factual background and no need to repeat or quote what the complainant said in her own words.

(ii) No mitigating factors to consider

[37] The trial judge also mentioned that defence counsel, Mr. Selgado, declined to make a plea in mitigation and that Vasquez agreed with that position. So that there was nothing for him to take account of as mitigating factors.

(iii) Adverse effects on complainant

[38] Lucas J referred to the Victim Impact Statement which revealed the adverse effects of the crime which Vasquez committed on the complainant which she described as a nightmare and she later had to resort to the services of a counselor. He did not repeat the contents since it was read earlier by the Prosecutor.

(iv) Aggravating factors

[39] The judge in his remarks at sentencing said that the Victim Impact Statement and the evidence provided aggravating factors against the convict. He stated them as follows:

> "(1) The victim was a minor when she was forcibly abducted.
>
> (2) A gun was used in the ordeal.
>
> (3) She was taken to an area seemingly which the accused was aware of before the abduction.
>
> (4) He sublimated the VC to two counts of indecent assault, one of which was … a stimulator with his intent to rape the VC.
>
> (5) The convict did not show any remorse for his criminal acts."

(v) Trial judge remarks on forcible abduction

[40] The judge said: "The Crime of forcible abduction carries a sentence of 13 years imprisonment. I take into consideration the aggravating factors in this case. Stand up. I sentence you to 10 years imprisonment."

(vi) Trial judge remarks on aggravating assault of an indecent assault

[41] The judge considered that aggravating assault of an indecent nature committed on a female carries a sentence of 3 years. He said: "*Indecent assault of a* ***depraved nature*** *committed by the convict against the VC, in my view 3 years is insufficient. However, that is the maximum. I sentence you to 3 years imprisonment for indecent assault*."

[42] Lucas J then deducted 3 months and 1 week from the sentence imposed for time served whilst Vasquez was on remand. He said, "*You are remanded for other offences, so I won't take that into consideration as a .. remand …"*

Sentence imposed to run concurrently

[43] The learned trial judge having considered the above then said: *"Sentence is to run **concurrently** and will take effect from today, 28th July 2017."*

Consistency in sentencing

[44] Lucas J considered the statutory provisions in sentencing and the aggravating factors. The judge did not have a range of sentences for forcible abduction and the starting point for the judge for that offence and for the offence of aggravated assault could have been 13 years and 3 years, respectively as he had the aggravating factors before him. At the trial, the Prosecutor provided the judge with one authority for sentence regarding forcible abduction, **Rivas and Wiltshire v The Queen**. Rivas and Wiltshire were convicted of rape and forcible abduction. For the offence of forcible abduction, Rivas had been sentenced to 7 years and Wiltshire to 8 years. Both appealed to the Court of Appeal which was allowed. On appeal the convictions were quashed and the sentences set aside. There was no comment by the Court of Appeal on the sentences. This case could not have been of great assistance to the Judge. The Court accepts the position of the Director on the difficulty to propose an established range of sentences for the offence of forcible abduction, applicable to the facts of the instant case.

Harrim Perez v The Queen *and authorities discussed in that case*

[45] Ms. Trapp relied on **Perez**, a rape case, where this Court upheld a sentence of 8 years for rape, to show that the sentences were manifestly excessive. This case is distinguishable from the present one as the appellant was convicted for rape and he was given the **minimum mandatory sentence of 8 years imprisonment**. The factual circumstances in that incident of the complainant having to run out of the appellant's car naked after her ordeal was certainly horrendous for her. But, **Perez** case does not stand on the same footing as the present matter, although it involved rape, oral sex and humiliation of the complainant.

[46] The legislative provisions applicable to the present matter is not as in the **Perez** case. Vasquez forcibly abducted the complainant, a minor at the time, at gun point. Pursuant to section 57 of the Criminal Code, he was **liable** to thirteen years imprisonment. **Perez's** case is of no assistance in establishing a range of sentences for forcible abduction.

[47] Likewise the cases of **Harry Williams** and **Alfonso Gilharry and Eli Kerr** discussed in **Perez,** relied on by Ms. Trapp. These cases were discussed to show range of sentences that were imposed for rape prior to the introduction in Belize, in 1987, of a minimum mandatory sentence of 8 years. **Harry Williams and Alfonso Gilharry case** was almost 44 years old. Gilharry's appeal was allowed for rape. He also appealed against a conviction for forcible abduction but was unsuccessful. A three year sentence was imposed on him for that crime which, upon imposition, was to run consecutively (not concurrently) with the rape conviction. **Kerr's** cases were almost 34 years old and he appealed from convictions of attempted rape, for which he was sentenced to 7 years at trial and 8 years at re-trial. These sentences were set-aside. In our view, these cases, which are of some vintage, do not assist with suggesting a sentencing range for forcible abduction and aggravated assault of an indecent nature. Ms. Trapp had not demonstrated to the Court how these cases are relevant in showing a sentencing range applicable to the circumstances of the instant matter and the legislative requirements.

Principle of totality

[48] The sentences imposed on Vasquez were ordered to run concurrently. The 3 years maximum sentence for aggravated assault of an indecent nature which was made to run concurrently with the sentence of 10 years for forcible abduction do not offend against the principle of totality.

When this Court can interfere with the discretion of trial judge

[49] Judges have a discretion to impose an appropriate sentence based on the circumstances of the case. See **Alleyne**. In the instant case, the trial judge exercised his discretion in handing down the sentences. This Court can only interfere with that

discretion if the sentence was wrong in principle or manifestly excessive as shown in the case of **Alleyne** where Hon. Mr. Justice Barrow JCCJ opined:

> "[87] Sentencing can be notoriously difficult because it is so much a matter of discretion. There is no objectively correct sentence. Appellate courts have no right to substitute for the sentence the sentencing court has imposed, the sentence the appellate court would have imposed. This is for the simple reason that the discretion is not given to them. The law is settled that an appellate court must only interfere with the sentencing judge's discretion if the sentence was wrong in principle or manifestly excessive."

[50] The exercise of the discretion of a trial judge and when the appellate Court can interfere with the sentence, was also discussed in this Court in the case of **Frederick Casimiro v The Queen**, Criminal Appeal No. 17 of 2011 and **Leonard Godoy v The Queen**, Criminal Appeal No 27 of 2011. In **Casimiro,** Honourable Justice Awich JA, writing for the Court, at paragraph 7 of the judgment said:

> "[7] We reminded ourselves that sentencing is primarily a matter for the discretion of the trial judge or magistrate, an appellate court should generally not interfere with that discretion. For it to interfere, there must be grounds such as: (1) the sentence is wrong according to the legislation or other principle of law applicable; (2) the trial judge acted on erroneous factual basis; and (3) the sentence is manifestly excessive."

[51] In **Godoy** similar remarks were made by the Court including that it is for the appellant to show why the Court should interfere with the discretion of the trial judge.

[52] The opinion of this Court was that it had no reason to interfere with the discretion exercised by the trial judge. The applicant, Vasquez, had not advanced any ground to show that the sentence imposed by the trial judge was manifestly excessive, or that the sentence was wrong according to the legislation or applicable principles of sentencing, or that the trial judge acted on an erroneous factual basis. The trial judge cannot be faulted for the absence of a plea in mitigation. Lucas J had no mitigating factors to consider and even if there had been one or more, that would not mean that the sentence would inevitably have been reduced for that reason only.

Conclusion

[53] It had not been established that the sentences imposed by Lucas J, on the appellant, Vasquez, were manifestly excessive as a result of him making no plea in mitigation. For the reasons set out above his application for leave to appeal his sentence was dismissed.

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HAFIZ-BERTRAM P (Ag)

MINOTT-PHILLIPS JA

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MINOTT-PHILLIPS JA

FOSTER JA

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FOSTER JA