

**IN THE SUPREME COURT OF BELIZE, A.D. 2022**

**CRIMINAL JURISDICTION**

**Central District**

**Indictment No C23/2019**

**THE QUEEN**

**V.**

**JOEL WESTBY**

**BEFORE:**                                      **The Hon. Justice Susan Lamb**

**APPEARANCES:**                           **Ms. Sheiniza Smith for the Crown**  
**Mr. Orson J. Elrington for the Accused**

**DATES:**                                      **8 March 2022, 21 March 2022, 31 March 2022 and 5 April 2022**

**SENTENCING**

1. On 5 April 2022, Mr. Joel Westby entered a plea of guilty to the offence of causing death by careless conduct pursuant to Section 108(2) of the Criminal Code.<sup>1</sup>
2. The agreed facts are that on 27 October 2016, between 6.30 p.m. and 7.00 p.m., Mr. Westby was driving his Honda CGR Storm motorcycle along Albert Hoy Street, Belize City, when he collided with the deceased, Rafael Marin. Mr. Marin was attempting to cross the road

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<sup>1</sup> Section 108(2), Belize Criminal Code, Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2011 (“Criminal Code”).

from the sidewalk. He had not yet made it to the centre of the street when he noticed the motorcycle and attempted to return to the sidewalk. On impact, Mr. Marin was thrown into the air. The motorcycle skidded and came to a halt. There is some dispute as to the speed at which Mr. Westby was travelling at the time of the collision. Two witnesses estimate it to have been 30 and 50 miles per hour respectively. Mr. Westby opines that he was travelling at about 10 miles per hour. Mr. Westby remained at the scene after the incident. Mr. Marin was taken to hospital but passed away there six days later.

3. On 26 February 2018, Mr. Westby was arrested and formally charged for both manslaughter by negligence and causing death by careless conduct (contrary to Sections 108(1)(a) and 108(2) of the Criminal Code). On 9 January 2019, Mr. Westby was indicted before the Supreme Court on a single count of causing death by careless conduct contrary to Section 108(2) of the Criminal Code and plead guilty to this offence on 5 April 2022.
4. Section 108(2) of the Criminal Code provides that “[e]very person who causes the death of another by any careless conduct not amounting to negligence, as defined in this Code, shall be guilty of an offence and liable to imprisonment for two years.”
5. Whilst the case law has emphasized that causing death by careless conduct is undoubtedly a serious offence, it is contrasted in sentencing with the more serious offence of manslaughter by negligence.<sup>2</sup> Sentencing for the offence of causing death by careless conduct under Section 108(2) of the Criminal Code encompasses four elements:
  - a) *A maximum term of imprisonment of two years.*<sup>3</sup> Whilst the courts have on occasion awarded a custodial sentence, more usually, any such sentence is awarded in default of payment.<sup>4</sup> Terms of imprisonment in default of payment have ranged from between three months to two years duration, depending on the circumstances of the case<sup>5</sup>;
  - b) *A fine.* Depending on the circumstances, decided cases have imposed fines in the range of \$2,000.00 to \$9,000.00, with the quantum typically being in the range of \$2,500 and \$4,500.00 in incidents involving a single death<sup>6</sup>;

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<sup>2</sup> Section 108(1) of the Criminal Code (punishable by imprisonment for five years); *see also Cardinal Smith v. The Queen*, Criminal Appeal No. 35 of 2005, 14 July 2005; *Michel Espat v. The Queen*, Criminal Appeal No. 2 of 2015, and *Director of Public Prosecutions v. Sherwood Wade*, Criminal Appeal No. 24 of 2015.

<sup>3</sup> *Director of Public Prosecutions v. Ravell Gonzalez*, Criminal Application for Leave to Appeal No. 2 of 2015 (“*DPP v. Gonzalez*”), at para. 14.

<sup>4</sup> *See Victor Cuevas v. The Queen*, Criminal Application for Leave to Appeal No. 17 pf 2007 (imposing a one year custodial sentence in view of the Accused’s unexplained aggressive driving and excess blood alcohol level at the time of the incident); *cf. Cardinal Smith v. The Queen*, Criminal Appeal No. 35 of 2005, 14 July 2006 (“*Cardinal Smith v. The Queen*”) (declining to impose a custodial sentence in the light of mitigating factors present in that case).

<sup>5</sup> *See e.g.* N4/2014 *Cesar Revolorio* (2014); C89/2017 *Jose Rodriguez* (2019); N18/2017 *Sixto Martinez* (2017); S28/2018 *Luis Tzul* and C104/2018 *Alfonso Noble* (2019) (all unreported).

<sup>6</sup> *See DPP v. Gonzalez*, at para. 2 (noting the impact of Section 151(2) of the Indictable Procedure Act where more than one person killed and requiring the payment of a single fine of \$8,000 and a sum of \$10,000 by way of compensation to the family of one of the deceased (*id.*, at paras. 18-20)) and *Revolorio*, *Sixto Martinez*, *Jose Dominguez*, and *Luis Tzul* (*supra*, footnote 5) (imposing fines between \$2,500.00 and \$3,500.00).

- c) *Compensation to the deceased's family.* Compensation under Section 108(2) of the Criminal Code does not seek to place a monetary value on human life. Instead, the quantum of compensation, when awarded at all under this provision, reflects considerations such as any payments previously made by the Accused to the deceased's family, prior or anticipated future insurance payments to the deceased's family, pending civil claims, and the financial means of the Accused.<sup>7</sup> The Court of Appeal has, however, intervened in a case awarding compensation of \$1,000.00, considering this sentence to be unduly lenient.<sup>8</sup> Compensation payments awarded to date has ranged from zero to \$10,000.00, with a range of \$3,500.00 to \$5,000.00 being the norm;<sup>9</sup> and
- d) *Disqualification from driving.* Despite the view expressed at paragraph 68 of *Cardinal Smith v. The Queen* that “where persons are convicted of an offence under this section, [...] [their driving] licence [...] should invariably be suspended”, other cases have criticized this approach as indefensibly rigid and inflexible and have refrained from ordering the suspension of the Accused's licence.<sup>10</sup> I find no justification for this additional punishment in the current circumstances.
6. In imposing sentence, I must have regard to the above sentencing regime and arrive at an individualized sentence which gives due consideration to both mitigating and aggravating factors. In the present case, aggravating factors are the seriousness of the offence and the consequence of loss of life, and thus the profound and enduring impact of this incident upon Mr. Marin's family. There are no additional aggravating factors, such as a blood alcohol concentration above the prescribed limit, clearly excessive speed, or additional breaches of traffic regulations or laws.
7. There are several mitigating features in the present circumstances, in particular Mr. Westby's guilty plea, which saves the court time and resources, remorse, and good character. Mr. Westby is 37 years of age. He has not previously come before the courts, save for charges of driving an unlicensed vehicle as an 18 year old, for which he received fines totaling \$230.00. After the collision, Mr. Westby remained at the scene and sought to render aid and ensure Mr. Marin reached the hospital. He was co-operative with the police investigation and has, through his counsel, expressed genuine remorse. His counsel also submits that Mr. Westby has previously provided financial assistance to the deceased's family without being instructed to do so by any court. However, no particulars regarding the dates and quantum of these payments is provided. Mr. Westby's willingness to compensate the deceased's family is nonetheless acknowledged and to his credit.

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<sup>7</sup> See e.g. N9/2014 *Donaldo Omar Can* (2015), N24/2018 *Abram Freisen* (2019) and N21/2017 *Jomar Hercules* (2019) (no compensation awarded but leave granted to reapply to the Supreme Court should insurance company not compensate deceased's family); N14/2018 *Norman Slusher* and N4/2018 *Jessy Garcia* (2018) (no compensation ordered as compensation already paid by insurance company); C42/2016 *Boyd Lopez* (2016) (no compensation payable due to pending civil claim); and C28/2018 *Ismael Garcia* (no compensation awarded following substantial insurance pay-out and the Accused's previous assistance to the deceased family with funeral expenses and having built the deceased's mother a house).

<sup>8</sup> *DPP v. Gonzalez*, at paras 1 and 2.

<sup>9</sup> See e.g. C24/2019 *Jessica Miller*; N4/2014 *Cesar Revolorio* (2014); S12/2013 *Josue Tello* (2014); N2/2015 *Hector Bobadilla* (2016) and *DPP v. Gonzalez*, at paras. 18-20.

<sup>10</sup> *DPP v. Gonzalez*, at para. 21.

8. In light of the above, I consider the following sentence to be appropriate in all the circumstances:

1. A fine of \$2,500.00, payable within twelve (12) months of the date of this judgment;
2. A term of imprisonment of six (6) months in default of payment; and
3. A sum of compensation of \$4,000.00, payable within twelve (12) months of the date of this judgment, to the family of the deceased, Mr. Rafael Marin.

Dated this 11<sup>th</sup> day of April 2022

A handwritten signature in dark ink, appearing to read "Susan Lamb", written in a cursive style. The signature is positioned above a horizontal line.

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Justice Susan Lamb