

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

(CRIMINAL DIVISION)

NORTHERN SESSION – ORANGE WAK DISTRICT

Indictment No. N4/2016

THE QUEEN

v

(1) NOE GONZALEZ AVILA

(2) ANGEL ANTONIO CARDENAS Jr.

(3) MATEO POTT Jr.

Charge: Murder (Guilty) Defendant #1
Manslaughter (Guilty) Defendants #2 & #3

Before H. Lord (J)

Appearances: Mrs. C. Vidal } Senior Counsel (DPP)
Mrs. S. Chell-Urbina } for the Crown
Ms. D. Chell }
Mr. N. Rodriguez for Defendant #1
Mr. L. Hamilton for Defendants #2 & #3

Heard on March 15, May 6, 25

5

JUDGMENT ON SENTENCING

The three (3) convicted men were indicted by the Director of Public Prosecutions (DPP) for the offence of murder, e.g. –

10 **INDICTMENT**

For that Noe Gonzalez Avila, Angel Antonio Cardenas Jr., and Mateo Pott Jr., on the 2nd day of July 2014, at Indian Hill Area, in the Orange Walk District, in the Northern District of the Supreme Court, murdered Ramon Cervantes Sr.

15 To that indictment (1) Noe Gonzalez Avila **entered a plea of Guilty.**

(2) Angel Antonio Cardenas Jr., entered a plea of Not Guilty; **but Guilty to the lesser charge of Manslaughter.**

(3) Mateo Pott Jr., entered a plea of Not Guilty; **but Guilty to the lesser charge of Manslaughter.**

20

To these pleas, the DPP thereafter accepted the pleas as pleaded by the three (3) Defendants.

THE FACTS OF THE CASE ACCEPTED BY THE DEFENDANTS

25 On the morning of 1st July 2014, all three (3) convicted men were at a taco stand, along with Manuel Castillo, when they saw Cervantes Sr. pass in his vehicle, and

5 they followed him. They overpowered him at his cane field along the San Roman
Road at gunpoint, and they took him into the vehicle owned and being driven by
Manuel Castillo.

After he was kidnapped he was taken to the Cabanas Farm along the Honey Camp
10 Road and kept there overnight. His feet had been taped with duct tape, his eyes had
been taped and his hands were handcuffed with a handcuff provided by a serving
member of the Belize Police Department.

The following morning Cervantes Sr. was killed. Gonzalez was the person who
15 struck the blows with a 1¼ x 1¼ piece of wood to Cervantes' head that led to his
initial fall. Cervantes Sr. was then beaten to death. The three (3) men then buried
Cervantes Sr. using a pick and a shovel that had been taken to the farm for the
purpose.

20 It is noted that Dr. Estrada Bran who conducted a post-mortem examination of the
body on site later stated the cause of death was **traumatic shock due to head
injuries caused by a blunt instrument.**

5 **THE HEARING**

The Court held a sentencing hearing in which the court was informed by Counsels for the three (3) convicted men that there would be no witnesses called on any of their behalfs at the hearing to give character evidence.

10 It is noted each convicted man made an unsworn statement from the dock in which they expressed their remorse and sorrow for their part in the events of the 1st and 2nd July 2014 which resulted in the death of the deceased (Ramon Cervantes Sr.)

DEFENCE SUBMISSION/MITIGATION

15 **Mr. Norman Rodriguez, Counsel for Defendant Noe Gonzalez Avila made a submission on his behalf thereafter stating** – that the defendant understands the sentence to be passed must be just; while it punishes for the crime committed, it also takes into consideration his potential to be rehabilitated and time needed for him to be re-integrated into society and also that the sentence passed on him must send a
20 strong message to him and other members of our society that this kind of action will not be tolerated and those who break the law will be punished on conviction. Those he now understands are reflected in the four (4) sentencing principles of the Court of Appeal of Belize case – **CA 13 of 2009 case Yong Sheng Zhang v R** those are:
(1) Retribution, (2) Deterrence, (3) Prevention and (4) Rehabilitation.

25

5 Counsel continued – he has saved the court and the Crown the time and resources that would have been invested in a trial, and the family the pain of having to relive the experience through trial. He was at the tender age of 22 years when he committed this crime.

10 There is no criminal history showing him having committed any serious crime before this one. The Prison report shows he engaged in and completed several meaningful programmes during his time on remand; having completed at least six (6) courses that developed his morality and himself. His record shows few infractions.

15 His Social Report speaks to a calm, humble-oriented young man. He migrated to Belize at the age 14 years on his own trying to survive in a land not of his origin, without education, family or any form of support.

He has accepted responsibility and pleaded guilty early and he is now ready to begin
20 the journey to rehabilitation and begs the court for mercy.

The Court also heard oral submissions from the Crown (The DPP) Mrs. C. Vidal, Senior Counsel in which she submitted in regard to this defendant, Noe Gonzalez Avila's plea to the charge of murder – accepted by the Crown; she pointed to the
25 cases which set out the principles which guide the court in determining the type and

5 range of sentences which can and should be arrived at in the type of case presently
before the Court (e.g. the charge here of murder) the cases to note a few (1) case
of **Calvin Ramcharran v DPP [2022] CCJ (AJ) GY**, (2) **R v Pedro Moran CA**
No. 1 of 2017, (3) **case of (Gregory) August & Gabb v R**.

10 Counsel submitted – the first step is to determine whether a custodial sentence is
appropriate. Counsel continued – it is unarguable that the only proper sentence for
the offence, in this case, is a custodial sentence. It appears this position has been
accepted by the defence. The next step is to identify a range of sentences and starting
points for each offender.

15 Counsel continued – the sentence imposed has been invariable, a sentence of
imprisonment with the possibility of parole **after a period between 20 – 30 years**.

It is submitted that the facts also militate against the imposition of a fixed-term
sentence. In my respectful view, the only appropriate sentence is a sentence of life
20 imprisonment with a term to be served before the offender can become eligible for
parole.

25 **THE LAW**

5 Here the Court noted that the law as amended by Act No. 22 of 2017 which amends the Criminal Code, Chapter 101 Laws of Belize at Section 106(1) states –

Subject to Subsection (2) “A person who commits murder shall be liable having regard to the circumstances of the case to (a) suffer death or (b) imprisonment for life.”

10

Subsection (3) goes on to say –

“Where a court sentences a person to imprisonment for life in accordance with Subsection (1), the Court shall specify a minimum term which the offender shall serve before he can become eligible to be released on parole in accordance with statutory provisions for parole.”

15

Subsection (4) states –

“In determining the appropriate minimum term under Subsection (3) the Court shall have regard to - (a) the circumstances of the offender and the offence; (b) the aggravating and mitigating factors of the case; (c) any period the offender has spent on remand awaiting trial; (d) any relevant sentencing guidelines issued by the Chief Justice, and finally any other factor that the court considers to be relevant.”

20

5 I here note that there are three (3) sentencing options available to the court in a murder trial. However, the Crown having informed the Court at pleas being taken - **(e.g) that the death penalty was being taken off the table**; the court is therefore left to consider only the other two (2) sentencing options.

10 The court notes that having considered the facts of this case which were accepted and now form part of the case, a fixed-term sentence is not a fitting sentence to be given to the defendant here.

The court has reached that decision after considering the totality of the evidence
15 before the court and the circumstances revealed therein; and by also analysing the various cases of this and other jurisdictions where in the instant cases, (e.g.) the majority of those heard where defendants were found guilty of murder, have been cases which have attracted life sentences and a term of imprisonment to be served before parole can be granted.

20
Now then, having reviewed several of the cases since the Amendment of 2017 the Court can see no similarities in the type of murders where convicted persons were sentenced to fixed terms. The Court, therefore, notes and rules that each of these cases is distinguished from the present case before this court, particularly in its
25 circumstances.

5 Here it is noted that in the present case before the court after a thorough review of
the sentences passed they falls **within the ambit of Section (b) (e.g.) life**
imprisonment and fixed-term before parole is granted.

Looking at the consideration as a whole and submissions submitted to this court;
10 sentencing the defendant in this case to a fixed term of years would not be consistent
with the previous sentences in which fixed terms were imposed on persons convicted
of murder in other cases.

The Court has further noted from the facts and the statements of the defendant (e.g.)
15 in his caution statement and his unsworn statement from the dock in trial, and also
in the submission of his Counsel; that the defendant was easily led and followed
others with whom he associated and eventually led to this charge now before the
court..

20 However, having regard to these factors, (e.g.) the seriousness of the offence, the
reprehensible conduct of the convicted man, what the court notes as a major
character flaw is being easily led, and the horrendous and chilling circumstances in
which the deceased (Cervantes Sr.) met his untimely death; and therefore noting that
the defendant may represent a grave danger to society I hereby note that this type of
25 conduct which resulted in the death of the deceased would only be fittingly

5 commensurate with the seriousness of the offence by handing down a sentence of
life imprisonment in this instance in the given situation of this case.

So having reached the above conclusion the court notes it is left with the sentencing
option which is (e.g.) a life sentence with eligibility for parole and therefore I here
10 note that this sentence I believe is appropriate and fitting for the defendant based on
the evidence, facts, submissions of circumstances in which the deceased was
kidnapped and the manner in which he eventually met his death; it is also noted that
in imposing a life sentence, I must specify a minimum term which the convicted man
shall serve before he becomes eligible to seek parole.

15

Therefore I here note the classical principles of sentencing (e.g) (1) Retribution, (2)
Deterrence, (3) Prevention, and (4) Rehabilitation which were laid down by Lawson
(LJ) in the case of **R v James Sargeant** (1974) 60 Cr. App. R 74 should be followed
here where he stated therein -

20 *“Any judge who comes to sentence ought always to have these 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.”*

In now turn to these principles –

25 (1) **Retribution**

5 The facts of the case I note here are also of importance in looking at this principle. And I note here that although the court must consider the facts, it must also note the public confidence and deliver a sentence that is fair to both the convicted man and the community.

10 And I note the **case of Alleyne** a CCJ case where Justice Barrow at para 29 stated –

“In this case, an acceptance of the sentencing court’s decision as justified by the principles of retribution and deterrence is strengthened by a recognition of the importance of the society’s sense of justice. While a court must not abdicate its decision-making in favour of popular opinion, or be dictated to
15 *by this undoubted pressure; courts must be sensitive to the community’s sense of justice. A court must be concerned about public confidence in the administration of justice and the rule of law.*

The contemporary view of retribution in sentencing is the idea that society’s
20 *disdain for the type of crime committed, and its condemnation of the conduct of the prisoner in the commission of that crime is at least to some degree reflected in the sentencing.”*

Here I note the evidence from the facts of the case as accepted was that when Dr.
25 Estrada Bran conducted a post-mortem examination of the body of Ramon Cervantes

5 Sr. on site **he stated the cause of death was traumatic shock due to head injuries caused by a blunt instrument.**

Here then I note the words of **Lawson (LJ)** who stated –

10 *“Society through the courts must show its abhorrence of particular types of crime, and the only way the courts can show this is by the sentences they pass.”*

Here then it is noted that Retribution is a particularly important consideration for serious offences such as murder, while the sentence cannot bring back the deceased
15 to life, the families of the deceased and other silent victims it is noted here await closure, and a sense that justice was done.

2. Deterrence

From the evidence, the convicted man is a first offender, so on looking at this, it may
20 be considered that the principle ought not to be applied against (him) defendant. However, after considering the seriousness of the offence committed; I note the taking of life particularly in the circumstances of this case before the court (e.g.) by beating the deceased to death with a 1¼ x 1¼ piece of wood while the deceased was taped and shackled with a chain etc. and his eyes taped up too after
25 being kidnapped from his farm for apparently no reason at all, I here note this cannot

5 be looked at trivially; as I note it is common ground the prevalence of this type of
offence has become a matter of great national concern. Here I also note the
horrendous way in which the deceased suffered and met his death.

So I now find that the fact of this being the convicted man's first offence, is not a
good, or sufficient reason not to apply this principle (e.g.) not only to deter the
10 convicted man but also to the members of society at large who may also contemplate
committing this type of offence also.

3. Prevention

Here looking carefully at all the evidence and from the submissions and reports (e.g.)
15 Social Report (etc.) from all appearances the defendant Noe Gonzalez Avila was
considered to be generally law-abiding, (e.g.) having no previous conviction (No
criminal record). Therefore, he has no antecedents, so if I find the convicted
man may and I note (may) be considered not to be a danger to society on his release
back into society in the future after paying his debt to society in the future years to
20 come.

Here then I consider that the sentence imposed now should be adequate to protect
the public from serious harm again from the offender. So looking carefully at the
facts of this case and the dreadful circumstances therein I am concerned that if the

5 defendant is released in the very near future, the convicted man may be or could be
a threat to the public and may cause harm to another human being and the public.

4. Rehabilitation

10 I note right away that the Psychiatric Report states that the defendant is without a
background of mental disorder and that he denies a personal history of psychiatric
disorders. Therefore the Doctor who examined the defendant, concluded after his
examination that based on his history, observation, Psychometrics tests, Pritchard
test and mental status examination the patient was found to have no active signs and
15 symptoms of Psychosis, at the time of examination.

Noting the report from the Belize Kolbe Foundation (Belize Central Prison). It is
noted (defendant) Noe Gonzalez Avila was remanded to the prison on 10th July 2014
and that he has violated the prison rules only one (1) time (e.g.) on 6th June 2017 for
20 possession of the unauthorized article (e.g. one (1) bora 6.25 inches and one (1)
homemade stinger).

His Prison Record also indicate that he has completed the following programs –

5 (1) Certificate of Completion – Restore Small Groups Programs “Journey to a new beginning after a loss from the pain of grief and disappointment” (August 2018).

(2) Certificate of Completion – “Lamp of the Light Bible Course”

10 Here I note that the Belize Central Prison has various programmes to assist in this endeavour at Rehabilitation and that the defendant has already begun actively engaging in these programmes.

15 I also noted that Defendant expressed to the family and the court his remorse and offered sympathy for the loss he caused in the death of the deceased (Ramon Cervantes Sr.)

I note that this is a first step along the road/path of rehabilitation. I, therefore, take all of the above into consideration in coming to my final conclusion.

20 I here then consider the following the aggravating factors –

1. The senseless loss of a human life
2. The severe effect of the loss of the deceased on the family, acquaintances and friends of the deceased.
3. The attack was premeditated and mercilessly carried out the nature and
25 manner his killing the victim being beaten to death with a piece of Board.

5 4. The age of the victim aged 71 years at the time of death.

MITIGATING FACTORS

1. Guilty plea.
2. Age of defendant at the time of the offence.
3. Absence conviction for a like offence.
- 10 4. Remorse the defendant expressed to the court and relatives of the deceased in
 remarks to the court.
5. Attempts at rehabilitation at Kolby.

Impact Statements

Here I also considered the Impact Statements submitted by the Crown in its
15 submission to the court during hearings.

I noted the statements of –

- (1) **Vilma Cervantes** wife of the deceased. Her description of her husband and
 his achievements in life and his service to his community.
20 Her expression of his absence left a void forever in her heart and how his death has
 changed the lives of herself, her children and grandchildren forever.
- (2) **Ramon Cervantes Jr.**, son of the deceased described his father as an
 exemplary human being, hardworking, kind and generous, etc. His work,
 achievement and community service to Orange Walk and his country.

5 His expression of how the death has changed his life drastically and his being now in constant fear of also being killed etc.

(1) Marissa Cervantes granddaughter, Marissa Cervantes Martin Daughter, Belezaro Carballo Teacher/Friend, Alfredo Ortega Friend and others all expressing how the death of the deceased has impacted their lives and way
10 of living etc.

The Social Report

The Court also has noted the Social Inquiry Report which was completed on the defendant Noe Gonzalez Avila.

15 This report prepared by the Social Department described how at the age of 14 years he left his family home in Guatemala and eventually settled here in the country of Belize in the Orange Walk District in Orange Walk Town.

20 The report stated he lived in Douglas Village, San Lazaro and eventually Orange Walk Town where he was contracted to maintain a property on Juventus Street.

The report also states that reference to the offender he shared, that he accepts full responsibility for his actions and is seeking forgiveness from the family of the
25 deceased.

5 The report states he had little support from family while growing up, but had the support of friends and strangers who tried to provide him with information for him to follow a positive path.

With him not having any prior offences it shows that he has been doing well up until
10 the point of this incident before the court.

The report concludes, that even being around some positive influence, Noe, because of his limited education, friendship and peer pressure, or coercion caused him to be in this incident.

15

Having noted the **Impact Statement, Prison Report, and Social Report, Psychological Report** I, therefore, take all these reports into consideration with all the other facts and the submissions the court has received in making my final decision as to the starting point and time the convicted man will be sentenced to
20 serve in prison less time spent on remand. This I do carefully considering each report and other necessary factors in the present case before this court.

Here I also wish to state that the court in its consideration takes all the reports and cases into consideration and give each report full weight when making its
25 consideration as to the range of sentence it can/may impose, and it also gives all

5 reports/facts, submissions (etc.) full and further consideration when taking the facts, pleas, submissions (etc.) into final consideration in arriving at a just starting point in this case now before this court.

SENTENCE

10 I here noted the case of **(Leslie Pipersburg et al v R) Privy Council Appeal #96 of 2006** from the Appeal Court of Belize, and I note that **Lord Earlsferry** in delivery of the Board's decision stated at para 33 as follows: -

15 *“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 readaptation which makes the social inquiry and psychiatric reports necessary for all such sentence hearings.”*

So now looking at the law requires me to look at both the offender and the offence; however, here I note that the intentional taking of someone's life is obviously an
20 offence that is not just against the victim but also harms the entire society with its outcome. Here then I find it necessary to do an evaluation of the aggravating and mitigating factors as brought forward in submissions before the court.

I note, on the aggravating side that it is the extreme nature of the offence (murder);
25 the use of a blunt object a piece of board 1¼ x 1¼” which is used to beat the deceased

5 in the head whilst he was taped up hand and foot, chained up also and handcuffed to
the chain around his body and leg. His eyes were taped up from the day before when
he was kidnapped from his farm on 1st July 2014 to the time of the beating on 2nd July
2014 to his head especially and subsequent death from that beating that next day
which Dr. Estrada Bran stated was traumatic shock due to head injuries caused by a
10 blunt instrument.

I further noted the serious disregard for life (e.g.) from the facts accepted by all three
(3) defendants, this perhaps had been planned before to kill Mr. Cervantes and to
bury his body.

15 The court notes this was indeed a very senseless act of violence and therefore showed
total disregard for life (e.g.) the life of the deceased who had not from the evidence
caused any problem or harm to the defendants including Noe Gonzalez Avila.

20 Further, the manner of the execution of the offence when considered showed there
was **a great deal of premeditation** (e.g.) the defendants lay waiting for him,
following him to his farm, kidnapping him from his farm taking him from San
Roman Road at gunpoint in a vehicle owned and being driven by Manuel Castillo
who is still at large, taking Mr. Cervantes Sr. to the Cabanas farm along Honey Camp

5 Road and kept there overnight (e.g. his feet taped with duct tape, his eyes taped with duct tape and his hands were handcuffed with a police handcuff.

This it is noted was shown as the unlawful taking of a life and the lack of thought and concern as to the horrendous consequences of beating an old man 71 years old in the head until he died. This showed the reckless and callous and indifferent
10 manner in which the plan of kidnapping and subsequent (murder) killing of the deceased was carried out.

It is further noted that the events of the two days were unprovoked by the deceased. The Prison Report it is noted spoke of only one infraction in about eight
15 (8) years. Noting the mitigating factors in favour of the convicted man. It is noted the defendant/convicted man was a youthful person approximately 22 years old at the time of the incident. He was a young man living in Belize far from his family in Guatemala having no guidance from aged 14 years when he left home (Guatemala) to come to Belize falling prey to peer pressure as stated by the Social Report, and
20 (he, therefore, followed the crowd) and was lured into all types of activities which culminated in the murder of the deceased.

He has expressed his remorse and has asked for forgiveness from the court and the family of the deceased for the offence he has committed, he has attended Counselling
25 Programmes at Kolbe Center.

5 The court noted that at the time the defendant/convicted man committed this offence he has from his psychiatric report exhibited no evidence of any psychiatric or behavioural disorder.

The Court noted the gravity of the offence is of a very serious nature, particularly in
10 the given situation of how the offence was committed in July 2014.

The harshness or severity of the penalty there in the courts' opinion should suit the offence committed which succeeded in the death of the deceased.

15 Here it is noted sentences imposed in this jurisdiction for similar crimes of murder are subject to the same penalty contemplated (e.g.) life imprisonment with a time served before the opportunity for parole.

Therefore from the above summation, and having considered the above noted
20 mitigating factors along with the aggravating factors against the background of the seriousness of the offence, and the case itself very carefully I here find that the aggravating factors far outweigh the mitigating factors as I here again note that the loss of human life is no trifling matter and that the courts must at all times have regard to this fact.

5 However, here again, I note also, that the sentence must be proportionate to the seriousness of the offence.

I also note that the submission of the Crown that none of the accused now convicted men ever approached the Crown or the court in the approximately eight (8) years of
10 the matter being before the court for trial either by themselves or through their different attorneys to indicate their intention to enter a plea of guilty to any of the charges before this court.

It was noted that only at the beginning of this trial this year (2022) that pleas were
15 offered (1) to murder when the plea of manslaughter was refused by the Crown for the 1st defendant Noe Gonzalez Avila and pleas were offered by Angel Cardenas Jr. and Mateo Pott Jr. to manslaughter in the said matter which was accepted by the Crown also in 2022.

20 In light of the above I have noted the above submission of the Crown considering this very carefully and after fully listening to submissions in both sides (Defence and Crown) I have decided that in the given circumstances of almost eight (8) years of the matter being before the courts, and it being an old matter and noted it was only at this present moment were the pleas offered by the then defendants which were
25 accepted by the Crown.

5 In light of the above, I have decided that there should not be any deduction of time noting the period of years, and this not being any early pleas being offered by the defendants. So I hereby rule that there will be no deduction made from the sentences in the present circumstances before the court.

10 I here also noted the case of **R v Howells (1999) 1 All E R 50** where Lord Bingham (CJ) stated –

15 *“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 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.”*

Here once more I note that a life has been lost in circumstances which were both
20 brutal and heinous and here even though the convicted man has expressed remorse and asked forgiveness amongst other things, the Law states the convicted man must be punished by the imposition of a sentence commensurate with his culpability for the charge of murder.

5 Therefore after reconsideration in the round of all of the above summations/discussions as to the range for murder it is noted as stated by Counsel for the Crown in her submissions that the range is accepted as a range of 20 – 30 years (e.g.) a term to be served before being admitted to parole.

10 Therefore after careful consideration of all the submissions and resulting conclusions above I here rule that the convicted man **Noe Gonzalez Avila is sentenced to (1) Life Imprisonment** and after consideration of a minimum period of incarceration being – with eligibility for parole after serving twenty-six (26) years.

15 It is noted he has been on remand for a period of almost eight (8) years taking into consideration the remanded period from the 10th July 2014 to the present date of 27th June 2022 (today); taking it to nearest month (e.g.) it will amount to 8 years.

Therefore the period on remand will be deducted from the said twenty-six (26) years
20 Ref. **(CCJ) case of Romero De Costa Hall** which stipulates the deduction for time spent on remand.

Accordingly, Noe Gonzalez Avila is sentenced to **18 years imprisonment with effect from today 27th June 2022** before being eligible for parole.

5 It is further ordered that Noe Gonzalez Avila is to receive counselling with a view to Rehabilitation before his release from prison.

Given this 27th day of **June 2022**

10

H. R. LORD
Justice of the Supreme Court
BELIZE

15

5 **Defence submissions/Mitigation for Angel Cardenas Jr. and Mateo Pott Jr.**

Mr. Leslie Hamilton Counsel for 2nd defendant Angel Cardenas Jr. and 3rd defendant Mateo Pott Jr. **who both pleaded guilty to manslaughter.**

Counsel made submissions on their behalfs stating as follows –

10

That the case of **R v Clifford Hyde** establishes a range of sentencing of 15 – 25 years for manslaughter convictions – where Sosa JA (as he then was) stated –

“The starting point or imposing a sentence is not the maximum penalty. The maximum is considered appropriate for the worst of the worst case.”

15

Counsel then referred to the case of **R v Hernandez C A Appeal No. 16 of 2010** where the Appellant caused the death of the deceased by strangulation, and during trial entered a guilty plea on the lesser count of manslaughter.

20 The trial judge gave a sentence of ten (10) years. On Appeal the Court of Appeal on the argument of the DPP agreed the case was one of borderline murder and set aside the sentence and imposed a sentence of twenty (20) years.

The Defence Counsel continued – the facts and features of this case at Bar I submit
25 do not fall in the category of the worst of the worst, but may be categorized at the

5 highest as – borderline murder/manslaughter consistent to that of **R v Hernandez** in which a twenty (20) year sentence was handed down.

The Counsel also submitted and referred to the case of **R v Jaime Dawson** where Chief Justice Benjamin stated –

10 *“The particulars of the facts of a case will determine where in the range the sentencing court will come down.”*

Counsel stated – Jaime Dawson received eighteen (18) years imprisonment, the weapon here was a gun.

15

However, Counsel stated in the present case the weapon was that of a piece of wood measuring 1¼ x 1¼ “ and the cause of death was several blows.

Looking at the facts, with respect to the degree of participation, Counsel stated
20 Mateo Pott stated he only hit Cervantes two (2) times on his arm and did not intend to kill him from his statement.

Counsel continued his submission and stated – He did however help in burying the body of Mr. Cervantes.

25

5 Mr. Cardenas' participation in his statement – he denied the participation in the
killing. On other evidence, he would have known that Cervantes would have been
kidnapped. He participated in that kidnapping and should have foreseen Cervantes
would be caused harm during the course of the enterprise; with knowledge and
foresight, he continued to participate, and after the killing; he assisted in the burying
10 of the body of Mr. Cervantes. His degree of participation is culpability, there was
no violence by Angel Cardenas on Mr. Cervantes.

Counsel continued – sentence will be passed on the facts of the witness statements
of the Prosecution (e.g. the Prosecution's case). I say this with respect to the facts
15 of this case – looking at the participation and degree of culpability accused person
is entitled to a discount having pleaded guilty to 1/3 of the sentence.

The convicted men understand that a term of imprisonment is inescapable and the
punishment must have the effect of Deterrence, Prevention, Retribution, and
20 Rehabilitation.

Angel Cardenas Jr. has participated in different rehabilitation programs. Mateo Pott
also participated in several programs at the prison. For both men, this shows the
journey traveled by both men.

5 In the circumstances which I have brought to the Court's attention, it is quite capable
to enable the court to be quite lenient and compassionate although firm and in so
doing to seek to be as lenient as the court can.

The Court also heard submissions from the Crown in regard to the submission made
10 on behalf of both convicted men Angel Cardenas Jr. and Mateo Pott Jr. as to the
charge of manslaughter accepted as pleaded to by both defendants/convicted men
now before the court.

Counsel submitted that the locus classicus in relation to sentencing for manslaughter
15 is from the Judgment of the Court of Appeal in the case **DPP v Clifford Hyde**. This
case established that the range of sentences for the standard street fight type of
manslaughter is 15 – 25 years.

In this case, the appropriate range of cases should be discerned by looking at
20 sentences affirmed by the Court of Appeal and not sentences imposed in the Supreme
Court that were not challenged in the Court of Appeal; and further, that regard should
be had to sentences imposed for the same type of manslaughter.

Counsel further submitted – this case involves the premeditated kidnapping of an
25 elderly man and the unprovoked beating of that man with a piece of wood.

5 The DPP also submitted that Counsel for Cardenas and Pott sought to downplay their
roles in the incident. The facts, however, are that they acted jointly to kidnap the
71-year-old victim; were there when he was beaten to death; Pott also hit him and
then they buried his body. The comment made by Counsel that there was no violence
used by Cardenas on Mr. Cervantes must be viewed in this light, was the submission
10 to the court.

THE LAW

It is noted that the offense of manslaughter is defined in Section 116 of Chapter 101,
Laws of Belize (Criminal Code) as follows –

15 *“that is causing the death of another person by unlawful harm.”*

It is here further noted that the penalty set if the accused person is subsequently
found guilty or pleads Guilty is stated in Section 108(1) (b) as imprisonment for
life. Here the court notes that the sentence of life imprisonment is the maximum
20 sentence that can be given for the offense of manslaughter if found guilty at law.

Further, it is noted that this sentence is reserved for the worst of the worst cases of
manslaughter.

5 Now then, looking at the present case it is noted, that it can be accepted as being a
borderline murder case, however, it is not in the category of the worst of the worst-
case as yet.

Here I note that the court has been assisted by both the Defence Counsel and the
10 DPP with a range of cases showing sentencing and sentences which follow a range
of sentences handed down by the Supreme Court and the Court of Appeal (Belize).

The sentences range from 15 – 25 years imprisonment handed down in pleas and
after a trial in manslaughter cases particularly from the Court of Appeal, (e.g.)

- 15 1. **R v Deon Cadle sentenced** – to 25 years imprisonment for the charge of
manslaughter
2. **R v Raymond Flowers** sentenced by the Court of Appeal to 18 years to follow
on terms he was presently serving.
3. **R v Kirk Gordon**, Privy Council – Appeal sent back to Court of Appeal for
20 sentencing; accused was sentenced on manslaughter findings to 15 years
imprisonment.
4. **John Williams v The Queen** sentenced to 15 years.

5 It is noted Counsel for both defendants/convicted men, did cite to the court the sentencing judgment of **Barrow (JA)** (as he then was) in the **case of Yong Sheng Zhang v R** C A No. 13 of 2009.

10 It is noted in that case that **Barrow (JA)** offered guidance as to the approach to be adopted in sentencing. He stated – the longstanding guideline that there ought to be consistency from which a range of sentences would emerge. He further referred to the consideration, and effect of the aggravating and mitigating factors to be taken into consideration in arriving at an appropriate sentence on the range of years offered in the cases concerning manslaughter sentences handed down, particularly by the
15 Court of Appeal, Belize.

Therefore, having considered his guidance and the facts of this case, its aggravating and mitigating factors, I find it very helpful in guiding me in arriving at a proper/considered opinion and decision in the present case before the court.

20

The Court also noted para 13 of the above judgment where **Barrow (J)** stated –

“the particular facts of the case will determine where in the range the sentencing court will come down.

5 *The weapon use, and how likely it was, (e.g.) to be lethal, maybe another factor in determining the degrees of culpability and therefore the severity of the punishment. Similarly, an offender who has a criminal record will not get as much a reduction from the starting sentence as one who has no criminal record, and is widely regarded in this community as a good caring person.”*

10

Barrow (JA) here referred to the case of **Enrique Soberanis v R** (C A No. 10 of 1996) as being an example of the latter, which attracted a sentence of 25 years imprisonment for manslaughter, but he had four (4) previous convictions prior to the present charge.

15

Here the Court noted that the two (2) defendants (1) Angel Cardenas Jr. and (2) Mateo Pott Jr. as submitted by their Counsel in his submissions to the court both had undergone some measure of rehabilitation; and from their unsworn statements given in court from the dock, both have shown to the court and submitted that they have
20 recognized the error of their ways; claiming it was because of their youth, and following persons who led them into problems; and using liquor and drugs and being of a youthful age. They also claimed peer pressure that eventually led them to this juncture and hence the charges they are on before this court.

5 It is noted that this may be a mitigating factor for both defendants. However, after
consideration of the entire case, the circumstances under which it occurred the
callous way the deceased was held (e.g.) being taped, blindfolded by tape over his
eyes; bound up, chained up, etc., then eventually for no apparent reason being beaten
with a piece of wood to death this would be aggravating factors and outweighs any
10 mitigating factors raised.

Then after the above discussion and consideration, while this is indeed a mitigating
factor, the court cannot **ignore the fact of the violence and callousness committed**
by the two accused on the deceased ending in his death while they claim not at their
15 hands. Here it is noted, however, is the fact they were part of the joint enterprise,
they helped in the digging of the shallow grave and helped in the burying of the
deceased after his death and were both present from day one (the kidnapping to the
death of the deceased and beyond.)

20 The plea of youthfulness and also the plea of an early plea to manslaughter has been
raised by the Defence.

However, in considering these, the court notes this matter has been before the courts
since January 2016. However, guilty pleas were only raised in the present session

5 of the Supreme Court now in session for this court in 2022 a matter of six (6) years later.

Having considered these submissions and others discussed in the event of the murder; and noting these considerations were pertinent to the pleas of manslaughter
10 the court considers, even after changes of so many Defence Counsels, that these are not early pleas, and it is noted in the six (6) years the offense has been before the court, these pleas were never raised to the court or Crown until the present sessions of the court (the January Session of 2022), when it was made and considered in the Court's presence, which led to the guilty pleas of manslaughter for Pott and Cardenas
15 being accepted by the Crown. Therefore after consideration I rule there will be no deductions made for the guilty pleas at this late stage of trial.

Further in considering the four (4) principles as noted in the case of *R v James Sargeant (1974) 60 Cr App R 74* the court considered the four (4) principles of (1) Retribution, (2) Deterrence, (3) Prevention, and (4) Rehabilitation as stated and
20 thoroughly discussed in the consideration of the matters related to that of the defendants/convicted men Noe Gonzalez Avila, Angel Cardenas Jr., and Mateo Pott Jr. and the court arrived at the same conclusion reached in the above discussions as regarding these principles as discussed, explained, and concluded above. Here in
25 consideration of the sentencing required when considering – (1) the

5 defendant/convicted man Angel Cardenas Jr., (2) Mateo Pott Jr., also and the sentence range applicable here; as it related to both convicted men.

Further the court also noted and considered the same mitigating factors as being appropriate for the consideration of the sentencing range in the present exercise as
10 regards defendant/convicted man (1) Angel Cardenas Jr., (2) Mateo Pott Jr., and therefore took all these into consideration in reaching its final conclusion in these cases now before the court.

THE SOCIAL REPORT OF ANGEL CARDENAS JR.

15 The court also noted the Social Report which stated that the defendant Cardenas left school at IV form (Std. IV) and never returned, showing he was not interested in formal education.

He later took up masonry/carpentry but moved on to BSI as an employee there. The
20 report also shows that he began drinking liquor at an early age.

The family stated he did not have many friends, but he had one friend (Noe Avila) who they believed to have a negative effect on him (Cardenas).

5 The Department of Social Services states – Angel has grown and has made steps to better himself and keep busy in prison. Angel has taken steps to rehabilitate himself.

The Department believes Angel’s life is salvageable.

10 The Antecedent Report – states he has no previous conviction.

The Social Report also shows he was doing well up to the point of this charge now before the court.

15 **IMPACT STATEMENTS**

Here I considered the Impact Statement of the family of the deceased (e.g.) (1) Vilma Cervantes wife of the deceased, (2) Ramon Cervantes Jr. son of the deceased, (3) Marissa Cervantes granddaughter, (4) Marisa Cervantes Martin daughter, (5) Alfredo Ortega friend, and (6) Belezario Carballo Teacher/friend, etc.

20

The Court has also looked at and considered the **Psychiatric Evaluation Report of Angel Cardenas** very carefully and it is noted that it states that Angel Cardenas has no active sign of symptoms of Psychosis and can understand the process of the Supreme Court.

5 Patient without a background of mental disorder at national health system. He denies personal history of psychiatric disorders.

The court also looked at the *Prison Report from Kolbe Foundation*. This stated –
Angel Cardenas D.O.B. 15th September 1994 has been in prison since 10th July 2014
10 on remand for the crime of murder.

The record shows he has two (2) infractions.

(1) 15/11/2015 – Possession of unauthorized article (1 cell phone)

(2) 23/1/2016 – Possession of 1 stringer.

15 He has completed the following rehabilitative programs.

(1) Certificate of Freedom Programs, “Gang Education and Rehabilitation
(November 2015 – August 2016)

(2) Certificate of Participation of Andragogy Workshop “Employment Training and
Education Service (30th August 2018)

20

The Court after carefully considering the aggravating factors and the mitigating factors was forced to conclude that the aggravating factors when considered in the round, far outweighed the mitigating factors in the circumstances of this case.

25 This is also taken into consideration in making the final decision stated below.

5 Here having noted the Social Report, Impact Statements, Prison Reports, Antecedents, etc. The Court in its consideration takes all these reports into consideration and give each report full weight when making its consideration as to the range of sentence it can/may impose and it also gives all facts full consideration when taking the facts, pleas, submissions, etc. into final consideration in arriving at
10 a just starting point in this case now before the court.

It is noted from a consideration of the cases submitted by both Defence and Crown; and the submissions made on behalf of the convicted men, and submissions of the Crown that the starting point prescribed as a range is accepted from the cases
15 considered are 15 to 25 years for manslaughter cases. Therefore, having considered all the above and having thoroughly discussed in the above discussions of the facts and submissions including all the reports/statements presented for and on behalf of the Crown and the Defence (Defendant Cardenas). The court now having regard to the circumstances of this case (i.e.) the horrendous nature of it, the unnecessary death
20 of a citizen of Belize. The court here has adopted a starting point that is conclusive to the facts and circumstances of this case. The court here adopted **a starting point of 21 years.**

Here then the court must take into account the manner in which the offense was
25 carried out as aggravating factor, (e.g.) the deceased was kidnapped from his farm

5 at gunpoint in broad daylight, held overnight, tied, tapped, chained, and handcuffed, and finally beaten to death without any provocation on his part which the court concludes was for all intents and purposes a deliberate act, although it may have lacked the requisite intention for the offense of murder.

10 Therefore, now taking into consideration the public expression of remorse by the accused/convicted man, the court has decided there will be no increase in the present sentence at this time/point and no deduction for an early plea.

Therefore after all the above-stated considerations **Angel Cardenas Jr., you are**
15 **sentenced to twenty-one (21) years imprisonment for the crime of manslaughter.**

It is noted that you Angel Cardenas Jr. have been remanded from 10th July 2014 to 27th June 2022 (today) a period of eight (8) years calculating to the nearest month.

20

Therefore the period on remand will be deducted from the twenty-one (21) years. **Accordingly, you are sentenced to serve thirteen (13) years imprisonment with effect from today, 27th June 2022.**

THE SOCIAL REPORT – MATEO POTT JR.

The court also noted the Social Report which stated that the defendant (Pott) finished Primary School education, and enrolled in Secondary School at Orange Walk Technical High School where he completed Form 1. He enjoyed school but
10 withdrew as his family could no longer financially support his endeavors. He thereafter at age 14, began working in the construction industry until the day he was arrested and charged with the offense before the court.

He has been on remand for the past eight (8) years and has enrolled in several
15 programs and used this time to learn new skills such as tailoring, improved his carpentry skills, and holds responsibilities as one of the maintenance personnel for Tango 11.

The Social Report states that Mateo Pott Jr. seems to be an individual who since his
20 incarceration, has taken the opportunity to better himself and worked towards his own rehabilitation.

Based on the information gathered it can be determined that Mateo Pott Jr. appears to be an individual of good character.

5 **THE IMPACT STATEMENTS**

Here the Impact Statements of the family of the deceased are considered – e.g.

1. Vilma Cervantes – wife of the deceased
2. Ramon Cervantes Jr. – son of the deceased
3. Marissa Cervantes – granddaughter
- 10 4. Marisa Cervantes-Martin – daughter
5. Alfredo Ortega – Firend
6. Belezaro Carballo – Teacher/Friend

The court has also looked at and considered **the Psychiatric Evaluation Report** of Mateo Pott Jr. very carefully; and it is noted that it states that Mateo
15 Pott Jr., based on his history, observation, psychometrics tests, Pritchard test, and
mental status examination, the patient was found to have not active sign and
symptoms of psychosis, at the time of examination. At the time of
examination. Based on the above, I consider that the patient can understand the
proceedings of the Supreme Court. Patient without a background of mental
20 disorder at national health system.

The court also looked at **the Prison Report from Kolbe Foundation**. This
stated Mateo Pott Jr. D.O.B. 22nd March 1986 has been in prison since 10th July
2014 on remand for the crime of murder.

25 The record shows he has one (1) infraction –

5 1. 23/5 2019 – Possession of unauthorized article – 1 long pants

His Prison Record indicates that he has completed rehabilitative programs as follows –

1. Certificate of completion of Freedom Program, “Gang Education and Rehabilitation” (November 2015 to August 2016)
- 10 2. Certificate of completion Restore Small Groups Program “Journey to Freedom (January 2018)

Here also were noted the Social Report, Impact Statements, Prison Reports, and Antecedent which shows the defendant/convicted man has no conviction of any offense of this nature prior to being charged for the present offense before the
15 court. Taking into consideration here also were four (4) sentencing principles of Retribution, Deterrence, Prevention and Rehabilitation discussed at length above.

The court in its consideration takes all of these reports and the above submissions, and discussions for manslaughter sentencing guidelines into consideration and
20 give each Report/Statements and submissions full weight when making its consideration as to the range of sentence it can/may impose, and it also gives all facts/submissions and cases quoted further consideration when taking the facts, pleas, submissions, etc. into final consideration in arriving at a just starting point in this case presently before the court.

5

The court finally after carefully considering the aggravating factors and mitigating factors (discussed above in this ruling) was forced to conclude that the aggravating factors when considered in the round far outweighed the mitigating factors in the circumstances of this case.

10

This is also taken into consideration in making the final decision stated below.

It is also noted from a consideration of the cases and submissions submitted by both the Defence and the Crown; made on behalf of the convicted men; and the submissions of the Crown on the subject that the starting point prescribed as a range is accepted from the cases considered as 15 – 25 years for manslaughter.

15

Therefore, having considered all the above discussions and submissions, and having thoroughly discussed the above discussion of the facts/submissions including all the reports/statements presented for and on behalf of the Crown and Defence.

20

This court now has regard to the circumstances of this case (e.g.) the horrendous nature of it, the unnecessary death of a citizen of Belize; the court here has

5 adopted a starting point that is conclusive to the facts and circumstances of the case. The court therefore here adopted a starting point of twenty-one (21) years.

Here then the court must take into account the manner in which the offense was carried out as an aggravating factor (e.g.) the deceased was kidnapped from his farm at gunpoint in broad daylight; held overnight, tied, taped, chained, and
10 handcuffed; and finally beaten to death without any provocation on his part; which the court concludes was for all intents and purposes a deliberate act; although it may have the requisite intention for the offense of murder.

Therefore, now taking into consideration the public expression of remorse by the
15 accused/convicted man the court has decided there will be no increase in the present sentence and no deduction for an early plea at this point in time.

Therefore, after all the above-stated considerations **Mateo Pott Jr., you are sentenced to twenty-one (21) years imprisonment for the crime of
20 manslaughter.**

It is noted that you Mateo Pott Jr. have been remanded for a period from 10th July 2014 to 27th June 2022 (today) **a period of eight (8) years** taking the remand time to the nearest month.

25

5

Therefore the period on remand will be deducted from the twenty-one (21) years. **Accordingly, you are sentenced to serve thirteen (13) imprisonment with effect from today, 27th June 2022.**

10

Given this 27th day of June 2022.

15 (H. R. LORD)
Justice of the Supreme Court
BELIZE