

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

**(CRIMINAL DIVISION)**

**NORTHERN SESSION – ORANGE WALK DISTRICT**

**Indictment No. N30/2017**

**THE KING**

**v**

**NOE GONZALEZ AVILA**

**AND**

**ANGEL CARDENAS (JR.)**

Plea:

Charge – Murder

Defendant #1 Noe Gonzalez Avila pleads Guilty to the one count of murder

Defendant #2 Angel Cardenas Jr. pleads Not Guilty to murder, but Guilty to the lesser charge of Manslaughter

Before – H. Lord (J)

Appearances:

Mrs. C. Vidal (SC) Director of Public Prosecutions }  
Ms. D. Chell – Crown Counsel }

Mr. Oscar Selgado for Defendant #1 Noe Gonzalez Avila  
Mr. Ronell Gonzalez for Defendant #2 Angel Cardenas Jr.

Heard on 23<sup>rd</sup> November 2022

## JUDGMENT

5 The two (2) convicted men were indicted by the Director of Public Prosecutions (DPP) for the offence of murder (e.g.) –

### The Indictment

For that Noe Avila, and Angel Cardenas Jr., on or about the 23<sup>rd</sup> day of April 2014, at Honey Camp, in the Orange Walk District, in the Northern District  
10 of the Supreme Court, murdered Sonia Abac Menchu.

It is noted on that indictment

(1) Noe Avila entered a plea of Guilty

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

15 To these pleas, the DPP thereafter accepted the pleas as pleaded by the two (2) Defendants.

### **The facts of the case as accepted by the defendants**

On the 23<sup>rd</sup> of April 2014, Sonia Abac Menchu was lured to the home of Manuel Castillo under the pretext of massaging his pregnant wife. On arrival, she was asked  
20 to go to Castillo's farm to "cure" it. She was then taken to the farm of Martin Major, in the Honey Camp Area of Orange Walk. At the farm, Abac was hit on her head with a piece of wood and when she fell to the ground, she was beaten to death. She was thereafter thrown in a well on the same farm.

5 On the 8<sup>th</sup> of July 2014, when in custody in relation to the death of Ramon Cervantes Sr., Noe Gonzalez gave a statement to the police under caution in which he admitted to knowing that Abac was to be taken to the farm to be killed; to accompanying Castillo to the farm and to helping to throw her in the well and covering the body.

10 On the 9<sup>th</sup> July 2014, Angel Cardenas Jr. also gave a statement in which he admitted to beating the woman and to helping to put her body in the well. Both accused accompanied police to the area on the 8<sup>th</sup> of July 2014, and had pointed out the well where the body had been disposed of.

The body was retrieved from the well on the 9<sup>th</sup> of July 2014, and identified by the  
15 sister of her partner (Narcisa Tzul).

The forensic examiner was unable to determine the cause of death because of the advanced state of decomposition of the body, but did note a temporomandibular fracture and also opined that the manner of death was homicide.

### **The Hearing**

20 The court held a sentencing hearing in which the court was informed by Counsels for the two (2) convicted men that there would be no witnesses called on behalf of either of the defendants at the hearing, and that there would be no character evidence given on either behalf also. It is here noted that each of the convicted men made an unsworn statement from the dock in which they expressed their remorse, and sorrow

5 for their part in the events which resulted in the death of the deceased (Sonia Abac Menchu).

1. Defendant Noe Gonzalez found Guilty after a plea for the offence of murder  
Defence submission/Mitigation

Mr. Oscar Selgado, Counsel for defendant (Mr. Noe Gonzalez Avila) made  
10 submissions on his behalf thereafter stating – I rely on the Social Inquiry Report dated the 24<sup>th</sup> of March 2022. Here at Section (4), the Social Worker, Mr. Andre Herrera deposes that Noe Avila on interview at the Kolbe Foundation perceives himself to be calm, humble and family oriented.

At Kolbe Facility the Social Worker deposed that Mr. Avila has been given  
15 responsibilities such as the caring and maintenance of his cell Tango 11. He assists in sharing of food to inmates, and the prison has entrusted him to conduct shopping errands for the inmates of his cell.

Counsel continued – these duties reflect that the Kolbe Foundation has found Mr. Noe Avila to be a person who is of trust, and they have placed these responsibilities  
20 on him. Noe Avila is a citizen of Guatemala age 30 years old, Date of Birth 14<sup>th</sup> February 1992. He lives in Belize alone. He has no immediate family members in Belize. Noe Avila has come to this court, and he has not wasted the court time. Since he was appointed an Attorney to represent him by this court, he has used the earliest opportunity to indicate to the court his plea of guilty as charged on the

5 indictment. The facts as read by the DPP and accepted by the Defence reveals that  
Noe Avila has been convicted for a similar offence and has been sentenced by this  
Honourable Court already.

My Lord, while it is true that this type of offence has somewhat become prevalent  
in Belize in recent times, the court is asked to make a judgment on each case in a  
10 case by case circumstance.

Justice of Appeal Denis Barrow in Criminal Appeal No. 13 of 2009 – Yang Sheng  
Zhang v The Queen at para 8 His Lordship expressed the considerations before  
sentencing to be – Retribution; Deterrence; Prevention; and Rehabilitation. Counsel  
submitted that each case is different from every other case, even though it may  
15 involve the same persons, the same accused, but I humbly submit that in the instant  
case, the court ought to rests its judgment on rehabilitation. Noe Avila has expressed  
remorse for this heinous act, he has expressed his apologies and his sorrow to the  
family of the deceased, and consequential to all of this I pray that Your Lordship  
may pass a sentence upon him which will be subsumed in his previous sentencing  
20 for the similar offense.

Crown’s reply (submission)

The Court also heard oral and written submissions from the Crown in the person of  
the DPP, Mrs. C. Vidal, Senior Counsel in which she submitted in regard to this  
defendant (Noe Gonzalez Avila plea of Guilty to the charge of murder is accepted

5 by the Crown; the DPP also pointed out to the court the cases which set out the principles which guide the court in determining the type and range of sentences which the court can and should be able to arrive at in this type of case (murder) presently before the court.

The cases of note and pointed out were:

- 10 (1) Calvin Ramcharran v DPP [2022] CCJ (4) (AJ) GY  
(2) R v Pedro Moran CA No. 1 of 2017  
(3) Pompey v DPP [2020] CCJ 7 (AJ) GY  
(4) CCJ case of Alleyne [2018] CCJ 17

The DPP submitted the first step (1) is to determine whether a custodial sentence is  
15 appropriate; and she continued it is unarguable that the only proper sentence for the offence (e.g. murder) now before the court is a custodial sentence and the next step thereafter (2) is for the court to identify a range of sentences and the starting point in the range for the defendant/offender sentence to commence.

Counsel also submitted that the sentence imposed on this type of charge has been  
20 invariable, a sentence of imprisonment for life, with the possibility of parole after a period of between 20 – 30 years been spent in prison.

Counsel also submitted that the facts here militate against the imposition of a fixed – term sentence. She stated –

5           *“In my respectful view, the only appropriate sentence here is a sentence of  
life imprisonment with a term to be served before the offender can become  
eligible for parole.”*

**The Law**

Here the court noted that the law was amended by Act No. 22 of 2017 which amends  
10 the Criminal Code, Chapter 101 Laws of Belize at Section 106(1) which 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”

Subsection (3) goes on to say –

15           *“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.”*

Subsection 4 states –

20           *In determining the appropriate minimum term under subsection (3) the court  
shall have regard to (a) the circumstances of the offender and the offense; (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*

5           *issued by the Chief Justice, and finally any other factor that the court  
                  considers to be relevant.”*

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

The court having noted the submission of the Crown (e.g.) that there also have been  
very few fixed term sentences imposed in this sort of charge, and that the sentence  
imposed has been invariable, a sentence of life imprisonment with the possibility of  
parole after a period between 20 – 30 years, noted the further submission of the  
15 Crown very carefully – as it was submitted that a fixed term of imprisonment is also  
inappropriate in the circumstances of this case.

However, the Crown went on to submit – It is the view of the Crown that the only  
appropriate sentence is a sentence of life imprisonment, with a term to be served  
before the offender can become eligible for parole.

20 The court now notes that having considered the facts of this case which were  
accepted by the defendant and now forms part of the trial; it is here noted that indeed  
a fixed term sentence is not a fitting sentence to be given to the defendant in the  
given circumstances here.

5 So here the court having considered the totality of the evidence before it and the  
circumstances revealed therein has analysed the various cases of this and other  
jurisdictions wherein the instant cases (e.g.) the majority of those heard where  
defendants were found guilty of murder; there have been cases which it is noted have  
attracted life sentences combined with terms of imprisonment to be served before  
10 parole can, or is granted.

Here then it is noted (e.g.) in the present case before the court and after a thorough  
review of the sentences passed that they fall within the ambit of section (b) (e.g.) life  
imprisonment and a term of years to be spent in prison before parole can be granted.

So looking at all the considerations and the submissions to this court; sentencing the  
15 defendant in this case to a fixed term of years; it is noted would not be consistent  
with the previous sentences in which fixed terms were imposed on persons who were  
convicted of murder in other cases.

Therefore, having regard to the above factors, (e.g.) the seriousness of the offense,  
the reprehensible conduct of the convicted man, and the facts which show the  
20 deceased was killed because she failed to give the winning numbers to a close  
associate of the accused; and for no other reason, then what the court notes is that  
this is a major character flaw in the defendant, along with the horrendous and chilling  
circumstances in which the deceased (Sonia Abac Menchu) met her untimely death.

5 So therefore noting that the defendant may represent a grave danger to society I hereby note that this type of conduct which resulted in the death of the deceased would only be fittingly dealt with to commensurate with the seriousness of the offense by handing down a sentence of life imprisonment in the given situation of this case.

10 It is further noted from the facts the deceased was buried on the farm where she was summarily killed by hitting her with a piece of wood in the head, and when she fell to the ground, she was beaten to death and thereafter she was thrown in a well on the same farm she was lured to, in the Honey Camp area of the Orange Walk District.

So here then the court further notes also from the agreed facts that there was no  
15 altercation between the deceased and the defendants, only that at the time of the killing, she was lured to the farm and immediately there hit in the head with a piece of wood and that on falling to the ground the deceased was then beaten to death by the accused and others present at the time.

So, having reached the above conclusion the court notes it is left with the sentencing  
20 option of (e.g.) a life sentence, with eligibility for parole, and therefore I here note that this sentence I believe and conclude is the appropriate, and fitting sentence for the defendant where here based on the evidence, facts, and submissions of the circumstances the deceased was lured to the area, and there she eventually met her death.

5 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.

Therefore, then I here note the classical principles of sentencing (e.g.) (1) retribution, (2) Deterrence, (3) Prevention, and (4) Rehabilitation which were laid down by Laws (LJ) in the case of R v James Sargeant (1974) 60 Cr App R 74 which should be

10 followed by the court here in this case and which stated –

*“Any judge who comes to sentence ought always to have these four (4) 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.”*

15 Here I now turn to these principles and apply them here in as follows -

**(1) Retribution**

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  
20 the community.

And so I note the case Alleyne [2019] CCJ 06 (AJ), which was here referred to by the Crown, where Justice Barrow at para 89 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*

5           *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  
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.*

10           *The contemporary view of retribution is the idea that society 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 also note the evidence from the facts of the case as accepted was that when  
15           the forensic examiner did the post-mortem he was unable to determine the cause of  
death because of the advanced state of decomposition of the body, but did note a  
temporomandibular fracture, and also opined that the manner of death was homicide.

Here too I now note the words of Lawson (LJ) who stated –

20           *“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.”*

So, here then the court notes that Retribution is a particularly important  
consideration for very serious offenses such as murder; so while the sentence cannot

5 bring back the deceased 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 defendant/convicted man was previously convicted before  
this court in a similar case in the death of Ramon Cervantes Sr., who was a 71 year  
10 old man who was kidnapped, taken to a farm, and then beaten to death with a piece  
of wood and his body concealed. Therefore, the convicted man is not a first time  
offender.

Therefore, after considering the seriousness of the offense committed and now  
before the court I note the taking of two (2) lives, one in each case before this court.  
15 So, I note in particular the similar circumstances in which both deceased met their  
deaths (e.g.) a piece of wood used to beat the deceased to death.

The court note again as stated above there was no fight or altercation which resulted  
in the death of the deceased, only the motivation in both cases for money.

So, here I note this cannot be looked on trivially, as the court here notes, this is  
20 common ground that the prevalence of this type of offence has now become a matter  
of very great national concern, and the court here also note particularly the  
horrendous way in which the deceased here suffered and met her death also.

5 So, here I note that this principle is needed to be considered very carefully and thoroughly; not only to deter the convicted man; but also to deter members of society at large who may/and are contemplating the committing of this type of offense also.

### 3. **Prevention**

Therefore looking very carefully at all the evidence and submissions, reports (e.g.)  
10 Social Report (etc.) from all appearances the defendant has committed the same offense twice but it was some time apart.

The convicted man is now being convicted a second time for a similar offense before these courts. However, he may yet be considered not to be a danger to society on his release in the future back into society after paying his debts to society in the  
15 future years to come.

So, here then I consider that the sentence this court is now considering should be adequate to protect the public from serious harm in the future from the offender. So, now looking carefully at the facts of this case, and also the dreadful circumstances therein; I am concerned that if the defendant is released in the very near future, the  
20 defendant/convicted man may or could be a threat to the public, and may cause harm to another human being again.

So, the court should also ensure by its sentence now being imposed that this will/may be unlikely when the defendant is released back into society again.

5 4. **Rehabilitation**

Here I note right away that the psychiatric Report states that the defendant is without a background of mental disorder, and that he denies any 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; that the patient was found to have no active signs, and symptoms of psychosis at the time of examination.

Also, noting the report from the Belize Kolbe Foundation (Belize Central Prison), it is noted the defendant was remanded to prison on 10<sup>th</sup> July 2014 and that he has violated the prison rules only one time (e.g.) on 6<sup>th</sup> June 2017 for possession of an unauthorized article (e.g.) one (1) bora 6.25 inches and one (1) homemade stinger. His prison record also indicates that he has completed the following programs –

- (1) Certificate of completion – Restore Small Groups “Journey to a new beginning after a loss from the pain of grief and disappointment” (August 2018)
- 20 (2) Certificate of completion – “Lamp of the Light Bible Course”

Here I note that the defendant has expressed in open court to the court and family of the deceased his remorse, and sympathy for the loss he caused in the death of the deceased (Sonia Abac Menchu).

5 I note the above as a first step along the road/path to rehabilitation. So, I will  
take all of the above into consideration in coming to my final conclusion.

I here now consider the aggravating and mitigating factors.

**I. Aggravating Factors**

- (1) The total and senseless loss of a human life
- 10 (2) The severe effect of the loss of the deceased on the family
- (3) The callous manner in which the offense was committed
- (4) The attack was premeditated and mercilessly carried out
- (5) The previous conviction of both men for a like offense (committed after the  
commission of the present offense)
- 15 (6) The length of time (e.g.) months passed before the death of the deceased came  
to the attention of the police; thus the relatives of the deceased were left in  
agony as to what had become of the victim.

**II. The Mitigating Factors**

- (1) The guilty plea
- 20 (2) The age of the defendant at the time of the offence
- (3) The remorse of the offender, demonstrated and stated to the court and family  
of the deceased

5 (4) The attempts made to complete rehabilitative programmes at the Belize  
Central Prison while on remand

### **Impact Statements**

Here I now considered the Impact Statements the Crown submitted on behalf of the  
deceased's family members.

10 (1) Narcisa Tzul of Zericote Street, Louisiana, described herself as the sister-in-  
law of the deceased who was the common-law wife of her brother (Alejandro  
Perez) she stated she knew Sonia Abac for about four (4) years, and that the  
deceased was a kind and caring person who was liked by everyone.

She stated the last time she saw the deceased was on 20<sup>th</sup> April 2014. She  
15 continued that as a request by her brother, she identified on the 9<sup>th</sup> July 2014  
at about 2:25 p.m. the remains of Sonia along with some personal items to the  
police.

She stated that this affected her psychologically and she states she continues  
to have flashback of that day of the image of her desecrated body which gives  
20 her nightmares.

She concludes that the killing of Sonia was heartless, and that her killers had  
no justification for killing her and that she misses Sonia very much at family  
gatherings.

5 (2) Alejandro Perez of Nature Park Street, Louisiana Area, Orange Walk Town  
also stated that Sonia Maria Abac was his common-law wife for about eight  
(8) years and that her death has left a void in his life.

He stated on 23<sup>rd</sup> April 2014 about 4:30 p.m. Sonia left home in a Taxi and he  
never saw her again.

10 He stated he made inquiries and reports of her being missing and on the  
afternoon of the 9<sup>th</sup> July 2014 he was informed by the police that Sonia's body  
had been found at a farm in the Honey Camp Area.

He stated he later buried the body and never got to see it because of its  
decomposed state.

15 He states, he still think of Sonia and cries for her. He also stated I am lonely  
without her. She was the center of my life.

Here I considered the Impart Statement very carefully.

### **The Social Report**

20 The court also noted the Social Inquiry Report which was completed on the  
defendant (Noe Gonzalez Avila).

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

5 The report also informed/stated that the defendant/offender accepted the full responsibility for his actions in this event, and that he is seeking forgiveness from the family of the deceased.

The report also states the defendant had little support from his immediate family, but had the support of friends and strangers who tried to provide him with information  
10 to help him to follow a positive path.

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

Here then I carefully noted (1) the Impact Statements, (2) The Prison Report, (3) The  
15 social Report, (4) the Psychological Report, and taking all of the above, along with the accepted facts, and all other facts along with the total submissions made to the court these will be used in determining and making my final conclusion in this case. This I now do while carefully considering each report, submissions and all other necessary factors in this case before the court for the sentencing purpose.

20 Here I also wish to state that the court in its consideration will and does take all the reports (etc.) into consideration, and it also give each report and submission full weight when making its consideration as to the range of sentence it can/may impose, and noting all this it further give full consideration when taking the facts, pleas,

5 submission (etc.) into its final consideration in arriving at a just starting point in this case now before the court.

So, I here note the case of Leslie Pipersburg et'al v R (Privy Council Appeal No. 96 of 2006) from the Appeal Court of Belize here, I note Lord Earlsferry in delivering of the Board's Decision stated at para 33 as follows –

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

The above quoted passage I here note and considers in my final approach/and  
15 conclusion in the decision now being made by this court.

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

Then I note on the aggravating side, that it is the extreme nature of the offense (murder), death, and the use of a blunt object (e.g.) a piece of wood which was used

5 to beat the deceased in the head, and when she fell to continue beating the deceased until she died.

The court note further, the deceased was lured to this farm in the Honey Camp Area because she failed to provide an (ally) a friend with the correct numbers to enable him to win the lotto. The court note also, the death occurred because of the desire  
10 for money. Here easy money which was left unfulfilled; so the deceased died as a direct result of this desire for money that she did not/could not produce/or fulfil.

So, I further here note the very serious disregard for human life, as the facts revealed the defendant and others had planned the events carefully leading up to the deceased's death and burial of the body too, because of the lust/desire for money  
15 which was left unfulfilled by they not getting the numbers to win this money (the lotto prize money).

The court notes further there was also a great deal of premeditation in accomplishing this act or mission on the part of the defendant and the others who participated and which ended in the death of the deceased with her being beaten to death by blows to  
20 the head which continued with blows until the deceased was dead and buried on the same farm along the Honey Camp Road in the Orange Walk District.

The court again here notes this was shown as the unlawful taking of a life and lack of thought or concern as to the very horrendous consequences of beating the victim (a female, 47 years old) in the head until she died with a piece of wood.

5 The court here then notes, this also showed the recklessness and callousness, and also in different manner in which there was a plan to lure the deceased to the area, and then subsequently the killing of the deceased was carried out by the accused and others in 2014 because of a desire for money.

The court also noted that at the time the defendant committed this offense he has  
10 from his psychiatric report exhibited no evidence of any psychiatric, or behavioural disorder.

The court again here noted the gravity of the offense and concluded it is of a very serious nature, particularly in the given situation of how this offense was committed in 2014.

15 So the court notes that the harshness, or severity of the penalty now in the court's opinion should suit the offense committed which succeeded in the death of the deceased.

So, here it is noted that sentences imposed in this jurisdiction for similar offenses/crimes of murder are subject to the same penalty now  
20 contemplated/accepted here (e.g.) life imprisonment with a time served before the opportunity for parole.

The court also here notes and accept that the sentencing range in these cases as submitted by the Crown is in the range of 20 to 30 years as the time to be served before parole is granted in these type of cases.

5 Here now from all of the above summations and having considered all of the above  
noted aggravating and mitigating factors against the background of the seriousness  
of the offense including the case itself I here find that the aggravating factors here  
far outweighs the mitigating factors; as I here also consider the loss of a human life  
is no trifling matter and I note that the courts must at all times have regard to this  
10 fact as I also note that the sentence must be proportionate to the seriousness of the  
offense committed.

### **Early Plea**

Here the court noted the submission of the Defence Counsel who submitted as  
follows –

15 *“My Lord, Noe Avila has come to this court, and he has not wasted the court  
time. Since he was appointed an attorney, My Lord, to represent him by this  
honorable court, he has used the earliest opportunity to indicate to the court his plea  
of guilty My Lord, as charged on the indictment.*

*My Lord, the facts as read by the Learned Senior Counsel, Director of Public  
20 Prosecutions, My Lord, and accepted by the Defense reveals that Noe Avila has been  
convicted for a similar offense, My Lord, and has been sentenced by this Honorable  
Court already.*

*while it is true that this type of offense has somewhat become prevalent in Belize in  
recent times, the court is asked to make a judgment on each case in a case-by-case*

5 *circumstance, and, that each case My Lord, is different from every other case, even though it may involve the same persons the same accused, and that it is always a difficult task for the sitting Judge My Lord, to come to every determination upon sentencing; but I humbly submit, My Lord, that in the instant case, the court ought to rests its judgment upon rehabilitation.”*

10 The Crown Counsel (the DPP) replied –

*“The guilty pleas of the offenders were not made at the first opportunity – they were arraigned on the 18<sup>th</sup> of September 2017, just over 5 years ago. Clearly, consideration must be given for their pleas, but the suggested 1/3 deduction surely cannot be appropriate in these circumstances. While both Counsel has argued on behalf of their clients that as soon as they were assigned, they received instructions to communicate pleas of guilty, the case management forms in this matter, filed by the same Counsel, for both Gonzalez and Cardenas on the 10<sup>th</sup> of February 2020, very clearly state that they were both informed of the consequences of entering a guilty plea, and that they did not want to plead guilty to any offense. It was not until earlier this year that they informed the Court of their intention to plead guilty.”*

The court have carefully considered the submissions of the Defense and the Crown and after careful consideration has decided it will not be giving the 1/3 discount for the early plea as this is not appropriate in light of the facts before the court. It will however, after careful consideration here give the accused a deduction for a partial

5 early plea seeing it was given somewhat shortly after Counsels were assigned, the court will de deduct three (3) years for this partially early opportunity/plea by using its discretion.

Finally, here I also noted the case of R v Howells (1999) 1 All ER 50 where Lord Bingham (CJ) stated –

10 *“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*  
15 *the sentencing system.”*

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

### **Sentence**

Therefore, after careful consideration of all the discussions, summations, submissions, reports and the resulting conclusions, and taking also into consideration

5 the cases discussed and brought to the attention of the court during trial (etc.) I now  
here rule that the defendant –

(1) Noe Gonzalez Avila is sentenced to life imprisonment

(2) And after the consideration of a minimum period of incarceration, that being  
after serving 25 years imprisonment he becomes eligible for parole.

10 (3) The court here orders that for the partially early plea, the time of three (3)  
years is deducted from the above sentence.

(4) Therefore, the defendant Noe Gonzalez Avila is sentenced to serve a total of  
**twenty two (22) years** imprisonment before he becomes eligible for parole.

15 (5) It is further ordered that Noe Gonzalez Avila is to become part of the  
Rehabilitation Programme being conducted at the Kolbe Foundation (Belize  
Central Prison) and he is to receive counselling with a view to further  
rehabilitation before his release from Prison.

**The Second Defendant Angel Cardenas Jr., found guilty after a plea of guilty for  
the offense of manslaughter**

20 It is noted Mr. Ronell Gonzalez represented the defendant Angel Cardenas Jr.

**Defence submission/mitigations**

Mr. Ronell Gonzalez, Counsel for defendant Mr. Angel Cardenas Jr. made  
submissions on his behalf; thereafter stating –

5     *“My Lord, Mr. Cardenas is 28 years of age, being born on the 15<sup>th</sup> of September 1994. I start on that point of his age to ask the court to take his age into consideration, My Lord, that at this time there is still room for rehabilitation when considering his plea for him to be a productive citizen in society. I also lay out the following grounds –*

10     *Firstly, that of remorsefulness, My Lord, you would have heard just now My Lord, on the defendant’s own accord, expressing remorsefulness, to the family, to the court, and even to society at large. It is a strong consideration in sentencing, whether or not the accused person has accepted his fault and then shown sorrow for his actions.*

15     *The second ground that of criminal history in relation to this defendant, I am instructed that defendant Mr. Angel Cardenas Jr., apart from the matter that we are aware of concerning Mr. Cervantes, and I will get to that point shortly, but there are no other previous criminal records in relation to Mr. Cardenas. My instructions My Lord, is that he hadn’t ordered the court, nor was he charged for any other offenses*  
20     *previously. I also asked the court to consider that point, My Lord.*

*The next point, My Lord, in mitigation would be that of rehabilitation, for the period of incarceration now as it stands, My Lord, eight (8) years and three (3) months being imprisoned thus far. I must suggest that the second defendant is well underway in terms of rehabilitation and reform. There in place the remand rehabilitation*

5 center that I understand offers a comprehensive program entitled My Lord, “The journey to freedom”, where this defendant has attended, and important life lessons such as rehabilitation, reform, counselling anger management and I think of most important the movement of spirituality with that of the father are touched upon. As far as I understand, My Lord, these programs are not mandatory. They are programs  
10 where the individual has to agree to enter and has the mindset towards rehabilitation and reform. Similar to that of the first defendant, the second defendant, I am instructed as well has been entrusted with trustees duties at the central prison. In terms of shop runs, kitchen runs My Lord, for this particular building where he's being housed. All in all My Lord, in terms of rehabilitation, I asked the court to  
15 strongly consider that Mr. Cardenas is well on his way to reform.”

### **The Crown’s submission/reply**

The reply of the Crown was presented by Mrs. C. Vidal (SC) – the DPP who stated as follows –

“The approach that the court should take to sentencing has been recently affirmed  
20 in the case of Calvin Ramcharran v the DPP, an appeal to the Caribbean Court of Justice, our apex Court, from the Court of Appeal of Guyana. In paragraph 13 of the judgment, Justice Barrow, delivering the lead judgment of the Court, restated the principles set out in Pompey v DPP by the President of the Court. In particular, paragraph 13 states -

5           *“In such cases [referring to cases in which a lengthy prison term may be imposed], the judge should hold a separate sentencing hearing at which mitigating and aggravating factors, including mental health or psychological assessments, can better be advanced and considered.”*

She went on to submit - *“it is submitted that the first step is to determine whether a*  
10 *custodial sentence is appropriate. The Crown’s position is that it is unarguable that the only appropriate sentence for each man, in the circumstances of this case, is a custodial sentence.*

*The next step is to identify a range of sentences and the starting point for each offender.*

15 *Cardenas has pleaded guilty to manslaughter. The locus classicus in relation to sentencing for manslaughter is the judgment of the Court of Appeal in the case of DPP v Clifford Hyde, Criminal Appeal No. 2 of 2006. This case established that the range of sentences for the standard street fight type of manslaughter is 15 to 25 years.*

20 *In this case the Court also made the point that the appropriate range of cases should be discerned by looking at 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”*

5 Counsel also drew the court’s attention to similar fact cases in which persons have  
been sentenced for killings resulting from injuries caused in a similar manner. These  
cases the Crown noted were –

1. Kirk Gordon v The Queen where Gordon was convicted of murder and his  
conviction was reduced to manslaughter by the Privy Council on appeal and  
10 the case was remitted for sentencing to the Court of Appeal. Gordon had hit  
the victim repeatedly to his head with a piece of wood. The Court of Appeal  
imposed a sentence of 15 years imprisonment on Gordon.
2. Shane Juarez v The Queen here the victim died from head injuries which were  
caused when he was hit with what was described as a “spetic tank cover” made  
15 of concrete.  
Juarez was convicted of murder, but on appeal his conviction was reduced to  
manslaughter and a sentence of 15 years was imposed by the Court of Appeal  
relying on the decision of Gordon.
3. John Williams v The Queen the victim died from a severe head injury due to  
20 a traumatic fracture of the skull after he was beaten with a piece of wood. The  
learned judge imposed a sentence of 15 years upon conviction for  
manslaughter, this sentence was affirmed by the Court of Appeal.

5 Counsel continued that while regard must be had to these cases when determining the appropriate starting point for the type of manslaughter that the court is presently concerned with, it is submitted that if the range is still accepted to be 15 to 25 years, the starting point along this range simply cannot be the lowest point on the spectrum given the mitigating features of each of these cases.

10 The Crown here submitted – the facts of the present case do not involve, strictly speaking, a standard street fight and there are none of those mitigating features. There was no fight. There was no contention. This was just, quite simply, the unjustified killing of a 47-year-old woman, a taco vendor, and masseuse, who was somehow, in the year 2014, able to convince a grown man that a spell could be  
15 worked to get him the Fantasy 5 numbers.

In this case, the victim was lured to a farm and beaten with a piece of wood because, she could not have produced Fantasy 5 numbers. This distinguishes the 3 cases referred to above.

This case is more similar to the case of the killing of Ramon Cervantes Sr., which  
20 was also motivated by the desire for money, which also involved these two men, notably, after they had already participated in Abac’s killing. Cervantes was a 71-year-old man who was kidnapped, taken to a farm, and then beaten to death with a piece of wood. His body had also been concealed.

5 Counsel submitted that the starting point for this offense could therefore not rationally be 15 years. If the range is accepted to be up to 25 years, the starting point on the present facts should be on the upper end of that range.

Counsel concluded – it is submitted therefore that for the offense of manslaughter the starting point should be the upper end of the range.

10 **THE LAW**

It is noted that the offense of manslaughter is also stated in Section 116(1), Chapter 101 Laws of Belize (The Criminal Code) as follows –

*“Every person who causes the death of another person by any unlawful harm is guilty of manslaughter.”*

15 It is here also noted that the penalty set by law if the accused person is subsequently found guilty or pleads guilty is in Section 108(1)(b) as Life Imprisonment.

Here the court notes that the sentence of life imprisonment is the maximum 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  
20 manslaughter. However when looking at the present case it a very bad case of manslaughter based on the facts and circumstances as accepted by the defendant and yet whilst not in the category of the worst of the worst case; it is noted it is on the borderline of murder.

5 So, here I note the above cases submitted to the court by the Crown, which are ranges  
of cases showing sentencing cases with sentences handed down by the Court of  
Appeal of Belize which are similar fact cases where the deceased in each case was  
killed in very similar fashion (e.g.) a piece of wood or cement cover.

However, in looking at these cases, it is indeed noted here in the present case there  
10 was no fight, there was also no contention between the parties which led to any sort  
of altercation; and finally the death of the deceased. Here the victim was lured to a  
farm and beaten with a piece of wood to death; because she could not produce the  
winning Fantasy 5 numbers, to the defendant and their associates. For failing to  
produce the winning numbers she was killed and her body buried in a well on the  
15 farm.

Here the court notes the Crown's submission that this case was similar to that of the  
case in which Ramon Cervantes was also kidnapped and subsequently killed for  
money. Here, money motivated the accused and others to take the life of Mr.  
20 Cervantes and also that of Ms. Sonia Abac.

It is here also noted that two (2) of the persons convicted previously along with  
another of the death of Mr. Cervantes, was and is the two men presently before this  
court on another charge of murder/manslaughter of another human being who also

5 died in a similar fashion (e.g.) beaten to death with a piece of wood, the main motivation being money and nothing else from the facts of the cases.

Another similar fact noted by the court was also the concealment of the bodies of the two (2) deceased after their deaths.

10 The court also noted that in its submission the Crown here noted as follows –

*“It is humbly submitted that the starting point for this offense, could therefore not rationally be 15 years. If the range is accepted but the upper end of that range.”*

15 So, here the court having considered the totality of the evidence before it; and the circumstances revealed therein has analyzed the various cases of this and other jurisdiction where in the instant cases (e.g.) majority of those heard where defendants were found guilty of manslaughter; there have been cases which, it is noted have indeed attracted sentences starting at 15 years and some on the upper end extending to 25 years also.

20 So here having regard to the above factors (e.g.) the seriousness of the offense, the reprehensible conduct of the convicted man, and the facts which show the deceased killed because she failed to give the winning numbers to a close associate of the accused; and for no other reasons; she met her death, here then what the court notes is that this is a major character flaw in the defendant. It further also notes the

5 horrendous and chilling circumstances in which the deceased (Sonia Abac Menchu) met her death.

So, after further consideration the court notes that the defendant may represent a grave danger to society now and in the near future. So, here the court notes that this type of conduct which resulted in the death of the deceased would after fittingly  
10 being considered along with the seriousness of the offence, be rewarded by handing down a sentence on the upper end of the range.

So, here the court further notes from the agreed accepted facts that there was no provocation, no altercation between the deceased and the defendants and their associates, only that at the time of the killing of the deceased, that she was  
15 intentionally lured to the farm where soon thereafter she was first hit in the head with a piece of wood, and continually beaten with the piece of wood on falling to the ground until she died by the accused and others present at the time.

So, in deciding the exact sentence which would fit the crime I here note the classical principles of sentencing (e.g.) (1) Retribution, (2) Deterrence, (3) Prevention, (4)  
20 Rehabilitation which were laid down by Lawson (LJ) in the case of R v James Sargeant (1974) 60 Cr. App. R 74 which it is noted should be followed by the court in the instant case, and which stated – *“Any judge who comes to sentence ought always to have these four classical principles in mind, and to apply them to the facts*

5 *of the case to see which of them has the greatest importance in the case with which he is dealing.”*

Here I now turn to these principle and apply them here in –

(1) **Retribution**

The facts of the case I note here are also of importance in looking at this principle.

10 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.

And here then I note and consider the case Renaldo Alleyne [2019] CCJ 06 (AJ), which was here referred to by the Crown, where Justice Barrow at para 89 stated –

15 *“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 by this undoubted pressure, courts must be sensitive to the community’s sense*  
20 *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 is the idea that society disdain for the type of crime committed, and its condemnation of the conduct of the prisoner*

5           *in the commission of that crime is at least to some degree reflected in the  
sentencing.”*

Here concerning the plea of the defendant of manslaughter I now note the evidence  
and note from the facts as accepted by the defendant that when the forensic examiner  
did the post-mortem examination he was unable to determine the cause of death  
10 because of the advanced state of decomposition of the body, but he did notice a  
temporomandibular fracture, and also opined that the manner of death was homicide.

So, at this juncture I note the words of Lawson (LJ) who stated –

15           *“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.”*

So, here the court note that Retribution is a particularly important consideration for  
very serious offenses such as murder. So, while the sentence cannot bring back the  
deceased to life, the families of the deceased and other silent victims; it is noted here  
20 await closure, and a sense that justice was done.

## **2.    Deterrence**

From the evidence the defendant/convicted man was previously convicted before  
this court in a similar case in the death of Ramon Cervantes Sr., who was a 71 year  
old man who was kidnapped, taken to a farm, and then beaten to death with a piece

5 of wood and his body concealed. Therefore, the convicted man is not a first time  
offender. So, after considering the seriousness of the offense committed and now  
before the court I note the taking of two (2) lives one in each case before this court.  
So, here again I note in particular the similar circumstances in which both deceased  
loss their lives, that being a piece of wood used to beat the deceased to death.

10 Here again I note as stated above there was no fight, or altercation which resulted in  
the death of the deceased; and as noted it was only the motivation for money which  
resulted the deaths.

So, here I note this cannot be looked on trivially, and it is noted this is common  
ground that the prevalence of this type of offense has now become a matter of very  
15 great national concern.

So, here I again note and consider the horrendous way in which the deceased suffered  
here and met her death also.

So here this principle is considered very carefully not only to deter the convicted  
man but also to deter members of society at large who may, and are contemplating  
20 the committing of this type of offence also.

### 3. **Prevention**

Now looking very carefully at all the evidence, and submissions, reports (e.g.) Social  
Report and others, from all appearance the defendant has committed the same  
offence twice, but some time apart.

5 So, the convicted man is now being convicted a second time for a similar offense before these courts. So, he may be considered in the future on his released not to be a danger to society then.

So, here I note and consider that the sentence this court is now considering to impose should be adequate to protect the public from serious harm in the future from the  
10 offender.

Now looking carefully at the facts of this case and the dreadful circumstances there in I am concern that if the defendant is released in the very near future the defendant may or could be a threat to the public again, thus causing harm to another human being. So, the court should also ensure by its sentence now being imposed that this  
15 will/may be unlikely when the defendant is released back into the society again.

#### 4. **Rehabilitation**

Here I note right away that the Psychiatric Report states – Patient is without background of mental disorder at National Health System. He denies personal history of psychiatric disorders. Based on his history, observation, psychometric  
20 tests, Pritchard tests and mental status examination the patient was found to have No Active Signs and Symptoms of Psychosis at the time of examination.

Further, noting the report submitted from the Belize Kolbe Foundation, it is noted the defendant was remanded to prison on 19<sup>th</sup> July 2014 and that he had violated the prison rules as follows –

- 5 1. November 15<sup>th</sup>, 2015 Possession of unauthorized article one cell phone  
2. January 23<sup>rd</sup>, 2016 Possession of unauthorized article – 1 stinger

His prison record also indicate that he has completed the following programmes –

1. Certificate of Completion – Restore Small Groups Programs “Journey to a  
new beginning after a loss from the pain of grief and disappointment – August  
10 2018.
2. Certificate of Completion – “Lamp of the Light Bible Course”

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

15 I also noted the defendant expressed to the family and the court his remorse, and  
offered his sympathy for the loss he caused in the death of the deceased (Sonia Abac  
Menchu).

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 now consider the following aggravating and mitigating factors in this case.

**I. Aggravating Factors**

(1) The total and senseless loss of a human life

(2) The severe effect of the loss of the deceased on her family

- 5 (3) The callous manner in which the offense was committed
- (4) The attack was premeditated and mercilessly carried out
- (5) The previous conviction of both men for a like offense (committed after the commission of the present offense)
- (6) The length of time (e.g.) months passed before the death of the deceased came
- 10 to the attention of the police; thus the relatives of the deceased were left in agony as to what had become of the victim.

## II. The Mitigating Factors

- (1) The guilty plea
- (2) The age of the defendant at the time of the offence
- 15 (3) The remorse of the offender, demonstrated and stated to the court and family of the deceased
- (4) The attempts made to complete rehabilitative programmes at the Belize Central Prison while on remand

## Impact Statements

20 Here I now considered the Impact Statements the Crown submitted on behalf of the deceased's family members. I therefore carefully noted the statements of –

- (1) Narcisa Tzul sister-in-law of the deceased who stated the last time she saw the deceased was on the 20<sup>th</sup> of April 2014.

5 She later stated that on the request by her brother (Alejandro Perez), she identified on the 9<sup>th</sup> July 2014 the remains of Sonia along with some personal items to the police. She stated she knew Sonia Abac for about four (4) years and she knew her as a kind and caring person who was liked by everyone.

10 She stated that this affected her psychologically and she states she continues to have flashback of that day of the image of her desecrated body which gives her nightmares. She concluded that the killing of Sonia was heartless, and that her killers had no justification for killing her and she concludes that she misses Sonia very much at family gatherings.

15 (2) Alejandro Perez also stated that Sonia Maria Abac was his common-law wife for about 8 years and that her death has left a void in his life.

He stated that on 23<sup>rd</sup> April 2014 about 4:30 p.m. Sonia left home in a Taxi and he never saw her again. He stated he made inquiries and reports of her being missing, and on the afternoon of the 9<sup>th</sup> July 2014 he was informed  
20 by the police that Sonia's body had been found at a farm in the Honey Camp Area. He stated he later buried the body and never got to see it because of its decomposed state. He states, he still think of Sonia and cries for her. He also stated I am lonely without her. She was the center of my life.

5 **The Social Report of Angel Cardenas**

The court also noted the social report of Angel Cardenas Jr. which stated that the defendant Cardenas left school at fourth form and never returned, showing he was not interested in formal education.

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

The report shows the family of the defendant 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).

The department of Social Services states in its report – Angel has grown and has  
15 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.

Here I noted and considered the Social Report very carefully, and here I noted and considered the Impact Statements very carefully, also while taking it into the final consideration and decision this court makes in this case now before it in arriving at  
20 a just starting point.

The court after considering the aggravating factors and the mitigating factors here was forced to conclude that the aggravating factors when considered in the round, far outweighed the mitigating factors in the circumstances of this case. So, this ruling will also be taken into consideration in making the final decision below.

5 Again, here I carefully noted and considered very carefully the Impact Statements,  
the Prison Report, Social Report, the facts of the case accepted by the defendant and  
the Psychological Report.

So, now I here take all of these reports into consideration with all other facts raised  
and accepted during this sentencing hearing by the court. I further considered very  
10 carefully and noted the submissions the court has received from both the Crown and  
Defence Counsels, which includes reference to the appropriate starting point,  
sentence the court can consider, and eventually can decide on, as being fitting in this  
case before the court at present.

Here I wish to state that the court in its consideration takes all reports, cases  
15 submitted into consideration and each is given full weight when making and  
weighing the considerations as to the range of sentence appropriate in the  
circumstances of this case while also considering along with these the evidence  
placed before it too.

Here I also considered the case of R v Howells (1999) 1 All ER 50 where Lord  
20 Bingham (CJ) stated –

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

5           *criminal sentencing and the importance of maintaining public confidence in  
the sentencing system.”*

So here I note the above case and discussions and here I note that a life was lost in  
circumstances which was brutal, heinous, and unprovoked, so here even though the  
convicted man has expressed remorse, and asked for forgiveness amongst other  
10 things, the law states the convicted man must be punished by imposition of a  
sentence commensurate with his culpabilities for the charge and plea now before this  
court on a count of manslaughter.

So, now having considered all of the above, including the cases, reports, submissions  
by both Defence and Crown Counsels, it is accepted that the range as accepted from  
15 the cases laid before the court, and considered is a range of 15 to 25 years for  
manslaughter cases.

Therefore, having considered all of the above, and having thoroughly discussed the  
above submissions, reports (etc.) of the facts, including the reports/statements  
presented by the Crown and Defence.

20 The court now having regard to the circumstances of this case (e.g.) the horrendous  
nature of it, the unnecessary death of a human being in Belize. The court here has  
adopted a starting point that is conducive to the facts and circumstances of this case.  
The court here adopted a starting point of 21 years for the offense on the upper end  
of the range.

5 **Early plea**

The court here listened to the submission of the Defence Counsel and that of the Crown as discussed above in the sentencing discussion of Noe Avila and it adopts the submissions made there and the conclusion it reached in the summation of Noe Avila is also accepted and made here. So, the court after consideration of a partially  
10 early plea submissions, the court will deduct three (3) years for this plea by using its discretion at this juncture in the trial.

**Sentence**

Therefore after careful consideration of all discussed above, and the conclusions reached, and considering all the cases discussed and quoted here in:

15 (1) I hereby rule that the defendant Angel Cardenas Jr., is sentenced to 21 years imprisonment.

(2) The court further order that a partially early plea, the time of 3 years is to be deducted from the above sentence.

(3) Therefore the defendant Angel Cardenas Jr., will serve a total of 18 years  
20 imprisonment for the offense of manslaughter to which he pleaded guilty.

(4) It is further ordered that Angel Cardenas Jr., is to become a member of the Rehabilitation Programme being conducted at the Kolbe Foundation (Belize Central Prison).

5 He is to receive counselling with a view to further his rehabilitation before his release  
back into society from prison.

**Time spent on remand**

The court here noted the submissions of:

(1) Mr. O. Selgado, Counsel for defendant Noe Gonzalez Avila where he stated as  
10 follows -

While it is true that this type of offence has somewhat become prevalent in  
Belize in recent times, the court is asked to make a judgment on each case in  
a case by case circumstance, and that each case is different from every other  
case, even though it may involve the same persons, the same accused, and that  
15 it is always difficult task for the sitting judge. My Lord, to come to every  
determination upon sentencing; but I humbly submit that in the instant case,  
the court ought to rest its judgment on rehabilitation. Rehabilitation of Noe  
Avila so that he may be restored with self-esteem, dignity, and a sense of  
purpose.

20 My Lord, Noe Avila has expressed remorse for this heinous act, he has  
expressed his apologies, and his sorrow to the family of the deceased, and  
consequential to all of this My Lord, I pray Your Lordship may pass a  
sentence upon him which will be subsumed in his previous sentencing for the  
similar offense given the circumstances.

5 (2) The Court here also further noted the submission of Mr. Ronell Gonzalez for the second defendant Angel Cardenas Jr. He stated as follows -

That the next point will be consideration for his time spent on remand, the time prior to conviction for the lost case involving Mr. Ramon Cervantes and of course for time spent to be given back in sentencing My Lord.

10 My Lord, I submit that the court view in relation to this offense, and the previous offense of which the defendant has been convicted My Lord, to be looked at as that of being on a crime spree.

The defence is asking for the sentences to run concurrently with that of the offense that the defendant has been convicted of.

15 The DPP, Mrs. C. Vidal (SC) replied on behalf of the Crown as follows –

It is humbly submitted however that the court is justified in departing from the ordinary course; by the time these two (2) men were charged with this offense, they were on remand for the murder of Ramon Cervantes. Gonzalez is presently serving time for murder, and Cardenas for manslaughter. When  
20 they were sentenced for those offenses, the period spent on remand was already taken into account. (See pages 41 and 47 of the judgment sentence).

The men cannot benefit from a deduction for the same period twice. This issue was looked at in the decision of the Court of Appeal in the case of Lenny

5           Benguiche v The Queen Criminal Appeal No. 3 of 2014 at para 12 to 14. There  
it is therefore clear authority for this position.

The Counsel continued –

Counsel for both accused urged the court to impose a sentence that is  
concurrent with the sentence that the men are currently serving. The offenses  
10           were committed months apart. There is no justification for the imposition of  
a concurrent sentence.

Further as submitted above the time spent on remand has already been taken into  
account.

The court is therefore invited to reject the invitation of both Counsels to impose the  
15           sentence for this offense as a concurrent sentence, not to deduct any time spent on  
remand.

The court therefore noted the above closing submissions for the defendants and the  
submissions made on behalf of the Crown. It therefore carefully considered and  
weighed these submissions in light of the case from the Court of Appeal of Belize,  
20           Criminal Appeal No. 3 of 2014 Lenny Benguiche v The Queen.

It is noted the exact similar request were made in the above case on appeal to the  
judges of the Belize Court of Appeal.

The Court of Appeal therefore considered the submission made to it and at para 12  
Hafiz-Bertram (JA) writing for the panel stated –

5           “In Hall the court also discussed when a sentencing judge should depart from  
the primary rule of full credit. At para 18, the court said –

We recognize a residual discretion in the sentencing judge not apply  
the primary rule, as for example:

(1) - -

10           (2) Where the defendant is or was on remand for some other offense  
unconnected with the one for which he is being sentenced

(3) - -

(4) Where the defendant was serving a sentence of imprisonment during  
the whole or part of the period spent on remand

15           (5) Generally where the same period of remand in custody would be  
credited to more than one offence

*This is not an exhaustive list of instances where the judge may depart from  
the prima facie rule, and other examples may arise in actual practice.”*

It is here also noted that as stated at para 13 of the above case here too the second  
20 and fourth rule are relevant here in this present case now before the court.

The court notes – that here (a) both defendants were on remand for some other  
offense unconnected with the one for which they are being sentenced.

5 Here both defendants were remanded at the said time since 10<sup>th</sup> July 2014 for the murder charge of Ramon Cervantes Sr., a case concluded on the 21<sup>st</sup> day of June 2022 when sentencing was handed down to both present defendants who are also in this case of Sonia Abac now presently before this court also.

(b) The court further noted that all time spent on remand as per the case of Romeo Da Costa Hall v The Queen were fully deducted from the sentence as time spent on remand in the previous case of Ramon Cervantes Sr.

(2) The Court also noted that prior to the guilty plea being accepted in the present case, and from the 27<sup>th</sup> day of June 2022 both defendants were also serving time for a prior offense/charge of murder in Ramon Cervantes Sr. case.

15 Therefore, following on the Ruling of the Court of Appeal (Belize), this court cannot here follow the primary rule; and so at this point following para 12 of the ruling in Lenny Benguche highlighted by Hafiz-Bertram (JA) this court must depart from the primary rule, and so there will be no time deducted for both defendants while on remand and serving time after sentencing (see (Section 12) of case of Lenny Benguche).

20 Further, noting submission of both Counsels for both defendants on their request for present sentence to be subsumed, or run concurrently with previous sentence in the Ramon Cervantes case, the court note as follows - the reply by the Crown here – The DPP (Mrs. C. Vidal, SC) submitted as follows –

5           *“This was not in fact a crime spree, the offences were committed months  
apart. There is no justification for the imposition of a concurrent sentence.  
Further, as submitted above, the time spent on remand has already been taken  
into account. The Court is therefore invited to reject the invitation of both  
Counsel to impose the sentence for this offense as a concurrent sentence.”*

10   The Crown also ended its submission by requesting of the court to take into  
consideration that this is the second conviction for the respective offenses for each  
of the men.

The Court therefore, after careful consideration of the above submissions of the  
Defense Counsels and the reply by the Crown noted the above case the facts as  
15   accepted by both defendants, the discussions, the reports submitted to the court, and  
replies by the Crown once more in reaching a decision on this matter of sentencing.

**SENTENCE**

Here I note and take into consideration that indeed this is the second conviction for  
the respective offenses (1) of murder, (2) of manslaughter for each defendant who  
20   are before this court.

Therefore, after careful consideration of the last submissions before the court and  
after carefully reviewing the whole case presented and argued before this court  
noting particularly the submission on this heading and noting carefully the closing  
submissions, the court rules it cannot accept the submissions of the Defense for

5 concurrent sentences to be imposed in the present case with its very horrendous  
circumstances.

Therefore, the court here rules that the defendants

1. Noe Gonzalez Avila convicted of murder
2. Angel Cardenas Jr. convicted of manslaughter

10 That the above sentences for the offenses of (1) murder for defendant #1, (2)  
manslaughter for defendant #2 are to run consecutively to any other sentence now  
being served.

**ORDER**

Both defendants before their final release from prison, a report to be made available  
15 at that time to the Court and the Prosecution Office (DPP) of the programs both  
undertook while in prison on the road to Rehabilitation at Kolbe for their return to  
society after paying their debts to society.

Given this 9<sup>th</sup> day of **February 2023**.

20

**( H. R. LORD )**  
**Justice of the High Court of Belize**