IN THE COURT OF APPEAL OF BELIZE, A.D. 2023

CRIMINAL APPEAL NO. 11 OF 2020

KEVIN JEX APPELLANT

v

THE KING RESPONDENT

BEFORE

The Hon Madam Hafiz-Bertram	-	President
The Hon Madam Woodstock-Riley	-	Justice of Appeal
The Hon Mr Justice Foster	-	Justice of Appeal

Mr. Leeroy Banner for the appellant.
Ms. Sheiniza Smith, Senior Crown Counsel and Romey Wade, Crown Counsel, for the respondent.

Date of Hearing: 20 October 2022
Date of Promulgation: 12 June 2023

REASONS FOR JUDGMENT

FOSTER, JA

[1] On the 22nd October 2020 the Appellant, Kevin Jex, was convicted for the offence of Manslaughter, having pleaded guilty to the lesser offence of manslaughter on the 16th day of July, 2019 and was sentenced to *"life in prison and will be eligible for parole after twenty years with effect from the date he was remanded at the Kolbe Foundation"*. The judge below accepted as the evidence the facts presented by the prosecution which was solely the statement given under caution by the Appellant. Those facts were recounted by the judge below in their entirety. I do not propose to repeat them here.

[2] This is an appeal against sentence. The Appellant filed his Notice of appeal on the 23rd day of October 2020. The matter came up before the Court of Appeal on the 20th October 2022. At that hearing we decided the matter and ordered as follows:

"1. The Application for leave to appeal is granted and treated as the appeal itself, which is allowed, on the basis that the sentence imposed by the learned trial judge is excessive.

2. In our written judgment which will be handed down at a later date, the Court will substitute a lesser sentence and give our reasons for doing so."

[3] We now give our reasons for allowing the appeal. We will also conduct the re-sentencing exercise and impose an appropriate sentence on the Appellant. Learned Counsel for the Appellant and the Respondent were extremely helpful in agreeing the principles that are applicable in this particular case, as every such case must be decided on their particular facts but applying the principles that have been stated in previous cases. We agree with both Counsel that the sentence imposed by the trial judge, in the circumstances of this case, was excessive. The judge correctly recounted the aggravating factors but it would seem did not rightly apply the principles that have been applied repeatedly in this jurisdiction.

[4] In this case the learned trial judge imposed the following sentence on the Appellant-

"i. taking into account the aggravating, mitigating factors, the circumstances of the offence, the protection of the public, and the rehabilitation, a term of thirty years for the manslaughter of Desmond Miller is the appropriate number of years that should be served before eligibility for parole.

ii. Ten years which is the credit this court is giving for having pleaded guilty at arraignment is to be deducted from the thirty years.

iii. The sentence of twenty years will commence from the date of remand".

[5] Counsel for the Respondent submitted that the use of the maximum punishment of life imprisonment as the starting point as well as the final sentence was an improper approach to sentencing and an overall inappropriate sentence. We agree. In this case the Appellant at the first available opportunity pled guilty therefore saving the court time and expense. He also cooperated with the police and showed his remorse. The weapon used was not one that is considered intrinsically dangerous and ought to have been taken into account. The only real substantial disagreement between Counsel for the Appellant and the Respondent was the starting sentence. The Appellant submitted that it should have been 12-15 years and the

respondent submitted that it should be 'upwards of 15 years' and suggested a starting sentence of 21 years.

[6] We have considered the well-known authorities of ***Kirk Gordon v The Queen***, [2010] UKPC 18 and referred to in paragraph 21 of ***Shane Juarez v The Queen***, Criminal Appeal No. 5 of 2010 and ***Edwin Hernan Castillo v The Queen***, Criminal Appeal No. 11 of 2017. In ***Juarez*** and ***Gordon*** the instrument used was not considered inherently lethal. This was therefore a relevant consideration.

[7] Counsel for the Respondent submitted that although the case before us is similar to ***Gordon*** and ***Juarez*** (the use of an inherently non-lethal instrument, and, they involve the infliction of fatal head injuries, in these case ***Gordon*** and ***Juarez*** may have had the partial defence of excessive harm available to them, "the Appellant in this case did not have that or any other legal defence available to him for the infliction of the harm". In this regard, learned Counsel submitted that although the sentence imposed below was excessive, this Court should depart from ***Juarez*** and ***Gordon*** (the common term sentence of 15 years and impose a more appropriate sentence in excess of 15 years. The suggested starting point was 21 years as in ***Osmar Sabido v The Queen***, Criminal Appeal No. 6 of 2016.

[8] Counsel for the Appellant and the Respondent referred us to ***Castillo v The Queen***, Criminal Appeal No. 11 of 2017 and quoted the judgment of Justice of Appeal Sosa P at paragraph 30 which I will repeat-

> *"..... A sentencing range is not, however, inscribed in granite. It is no more than a general guideline. There will inevitably arise from time-to-time cases calling from a deviation therefrom. Like Courts in other jurisdictions, this court must be alive to the fact that the variety of factual situations in which manslaughter is perpetrated is unlimited. Quite apart from that, courts interested in maintaining the essential confidence and trust of a law-abiding public must be prepared to make realistic and hard admissions about the lower end of a sentencing range if the prevalence of crime to which it applies is not decreasing, or even worse, keeps increasing. Indeed this Court regards itself as free, in an exceptional case to fix a sentence beyond even the higher end of the sentencing range where a particular mix of aggravating and mitigating features so demands. The sentencing range is thus an aide used early on in the*

sentencing exercise, whereas the features, aggravating and mitigating, of the particular case come into play later."

[9] I agree with learned Counsel for the Respondent that the circumstances under which the injuries were inflicted, not being preceded immediately by an argument or fight coupled with other serious aggravating factors sets this case apart from ***Gordon*** and ***Juarez***. The Court agreed that the starting point ought to be 18 years and not 15. We found the aggravating factors sufficient to add 3 years making it 21 years. We found that the remorse and cooperation of the Appellant with the police justified a reduction by 1 year leaving a 20-year sentence. We reduced the 20 years by 1/3 for his guilty plea, that is 6 years and 8 months. The appropriate notional sentence is therefore 13 years and 4 months. The period of remand to the date of imposition of sentence by the lower court was 7 years and 16 days which has to be deducted from the notional sentence. That deduction leaves a sentence of 6 years, 3 months and 14 days to commence from 21 October 2020.

Disposition

[10] The Court quashes the sentence imposed by the trial judge on the Appellant and imposes a sentence of 6 years, 3 months and 14 days to commence from the 21 October 2020.

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FOSTER, JA

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HAFIZ-BERTRAM, P

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WOODSTOCK-RILEY, JA