

IN THE COURT OF APPEAL OF BELIZE, A.D. 2023  
CRIMINAL APPEAL NO. 9 OF 2019

**Paul Martinez**

**Appellant**

**v**

**The King**

**Respondent**

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Before:

The Hon. Madam Justice Hafiz-Bertram	-	President
The Hon. Mr. Justice Bulkan	-	Justice of Appeal
The Hon. Madam Justice Arana	-	Justice of Appeal

Mrs. Peta Gay Bradley, Legal Aid and Services Centre, for the appellant.  
Ms Sheiniza Smith, Senior Crown Counsel, for the respondent.

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Hearing Date: 20 March 2023  
Promulgation Date: 9 June 2023

**JUDGMENT**

**ARANA, JA**

[1] This is an appeal against sentence. The Appellant, Paul Martinez, was charged and indicted for murder on 23<sup>rd</sup> September 2014 and arraigned on 7<sup>th</sup> October 2014, while unrepresented. Mr. Oscar Selgado, who was assigned as his legal aid counsel, appeared on behalf of the Appellant on 14<sup>th</sup> June 2018. The Appellant pled guilty to manslaughter on 24<sup>th</sup> September 2018. A mitigation hearing was held on 30<sup>th</sup> October 2018 in the absence of the Appellant's counsel. Justice Marilyn

Williams (as she then was) sentenced the Appellant on 20<sup>th</sup> May 2019. The learned trial judge began calculating the sentence commencing at 20 years imprisonment and deducted 3 years for the Appellant's guilty plea. From the remaining 17 years, Her Ladyship then deducted a further 6 years and 10 months in consideration of the time that the Appellant had spent on remand. The Appellant was therefore sentenced to a term of 10 years and 2 months starting from 20<sup>th</sup> May 2019, the date of imposition of sentence.

### **The Facts of the Case**

[2] The Appellant and the deceased, Raheem Smith, were with a group of friends in a yard on George Street, on 19<sup>th</sup> July 2012, when an argument erupted between the Appellant and Smith over Smith's bicycle. Smith proceeded to hit the Appellant and the two started fighting with each other. The Appellant ran to his girlfriend's house and returned with a knife. He proceeded to make stabbing motions with the knife at the deceased who shielded himself with a board. The Appellant stabbed the deceased in the upper part of his chest; the deceased died from this injury. On this same date, the Appellant gave the police a caution statement describing his version of events. The Appellant was arrested and charged with murder, he later pled guilty to manslaughter and was sentenced to 10 years and 2 months imprisonment.

### **The Grounds of Appeal**

[3] The following grounds of appeal have been filed on behalf of the Appellant:

1. The Learned Trial Judge erred in law by not considering a reasonable and fair sentence.
2. The Learned Trial Judge erred in law by not considering the guidelines necessary for sentencing in accordance with the CCJ in *Romeo Da Costa Hall v The Queen*.
3. The Learned Trial Judge erred in failing to apply a one third discount for the guilty plea by the Appellant and further did not give reasons for the amount of years discounted for the Appellant's guilty plea.

## **Ground One**

### **The Learned Trial Judge erred in law by not considering a reasonable and fair sentence.**

[4] The learned trial judge sentenced the Appellant to a term of 10 years and 2 months, having taken into account and deducted 3 years for the fact that he pleaded guilty and an additional 6 years and 10 months for the time he was on remand awaiting trial for this crime. In passing sentence on the Appellant, Justice Williams stated at page 47 of the record that she took several mitigating factors into account, including the fact that the Appellant pleaded Guilty to the lesser charge of manslaughter and in so doing saved the court the time and expense of a full trial. Her Ladyship also considered the factor of the Appellant's age in that he had just turned 18 years old at the time of the incident, the fact that he expressed remorse for his actions and the fact that the evidence showed that the deceased was the person who initiated the physical altercation. The court also took into account the testimony of the character witnesses called by the Appellant at his mitigation hearing. His mother testified that she had lost her only other child, her younger son, due to him being killed in retaliation of this murder committed by Paul Martinez. She said that the Appellant was now her only remaining child and she needed him. The judge also considered the testimony of the girlfriend of the Appellant who said that she had been dating him for four years and that he sent her bible verses from prison every day. The Court also considered that the Appellant had stated in his mitigation plea that he never thought his life would have ended up like this with him being in jail for killing someone.

[5] In passing sentence on the Appellant, the Court took into account the gravity of the crime of murder and its prevalence in Belize as two aggravating factors. The judge also said that another factor which she considered to be an aggravating factor was that the Appellant stabbed a defenseless person to death and that the Appellant was not a first-time offender at the time of this incident.

[6] Mrs. Bradley argued on behalf of the Appellant that the trial judge's starting point of 20 years imprisonment was excessive in light of all the circumstances of the case. It is her submission that the sentence in this case was not fair or reasonable in light of decided cases such as *Young*

*Sheng Zhang v The Queen* Criminal Appeal No. 13 of 2009, *James Moreira v The Queen* Criminal Appeal No 12 of 2001 and *DPP v Clifford Hyde*, Criminal Appeal No 2 of 2006, which suggest that these cases can be categorized as ‘the worst manslaughter cases’ with sentences that fall under a range of 15 to 25 years. While the case at bar is one which carried fatal consequences, it is not one of the worst cases in that it is at the lower end of the spectrum and therefore the sentence should be between 12 and 15 years.

[7] Ms. Smith on behalf of the DPP’s office in her submissions conceded that the learned trial judge had erred in her approach to sentencing. She agreed that following the guidelines laid down by President Sosa (as he then was) in *Clifford Hyde v The Queen*, Criminal Appeal No. 2 of 2006 para 11, a sentencing range or common sentence was established for each type of manslaughter case that came before the court, e.g., manslaughter by shooting, manslaughter by strangulation, manslaughter by stabbing etc. The sentence range in *Hyde’s case* for manslaughter by stabbing was 15 – 25 years. While the learned trial judge mentioned certain mitigating factors that she considered in passing sentence on the Appellant, such as the plea of Guilty, the show of remorse, the Appellant’s tender age and the fact that the victim was the initial aggressor, the learned trial judge did not give the Appellant credit for the last three factors.

[8] Learned Senior Crown Counsel for the DPP also referred to *Christopher Castillo v The Queen*, Criminal Appeal No. 1 of 2001 where a sentence of 15 years was reduced to 10 years on appeal. In that case, the deceased had initiated the violence by chopping the appellant with a machete and the trial judge had failed to take into account the extreme provocation suffered by the appellant when the incident occurred. President Rowe stated that while the trial judge was rightly concerned about the high level of violence in Belize, in passing sentence the facts and circumstances of the particular case must be given full weight. It was the judge’s failure to take into account this extreme provocation that resulted in the Court of Appeal reducing the sentence of 15 years for manslaughter to a sentence of 10 years.

## **Ground Two**

**The Learned Trial Judge erred in law by not considering the guidelines necessary for sentencing in accordance with the CCJ in *Romeo Da Costa Hall v The Queen*.**

[9] At the hearing of the appeal, Mrs. Bradley abandoned this ground of appeal in light of the Crown's stated position that there was no doubt as to what the sentence was that was passed by the court in this case.

## **Ground Three**

**The Learned Trial Judge erred in failing to apply a one third discount for the guilty plea by the Appellant and further did not give reasons for the amount of years discounted for the Appellant's guilty plea.**

[10] Mrs. Bradley argued that the learned trial judge in passing sentence on the Appellant failed to follow a discount of one third of the term of imprisonment for pleading guilty. She referred us to *Desmond Baptist v The Queen*, St Vincent and the Grenadines CA No. 8 of 2003, where Byron CJ (as he then was) referred to the public policy reasons why there is a discount given for guilty pleas and that these pleas benefit the criminal justice system. These reasons include the fact that the offender pleaded guilty as early as possible resulting in him receiving a full discount on length of incarceration, the first-time offender of this specific offence, and the age of the accused where he is 18 or below whose age must be considered as a mitigating factor by the trial judge. It was emphasized that the court must be slow to imprison young offenders and should focus instead on the possibility of the rehabilitation of young offenders.

[11] Ms. Smith conceded this ground at the hearing of the appeal.

[12] At the conclusion of the oral submissions, the Court reserved judgment and asked for further submissions from both counsel on the mathematical computation of the new sentence bearing in mind deduction for mitigating factors, addition for aggravating factors, as well as the deduction for time spent for other offences.

[13] Mrs. Bradley, after citing various cases where the Court of Appeal took specific circumstances into account in reducing sentence, referred to guidelines set out in *Clement Meisha v R* by then President Morrison, outlining the steps that the court should take in calculating sentence:

- i) Identify the appropriate starting point;
- ii) Consider any relevant aggravating features;
- iii) Consider any relevant mitigating features (including personal mitigation)
- iv) Consider, where appropriate, any reduction for a guilty plea; and
- v) Decide on the appropriate sentence (giving reasons)

[14] Mrs. Bradley also addressed the issue of how the sentencing court should treat time spent on remand by the Appellant. She cited *Romeo Da Costa Hall v The Queen*, 2011 CCJ 6 (AJ) which stated that full credit should be given to the Appellant for time spent in prison on remand; if the court needs to depart from that general rule, then reasons for that departure must be given.

[15] Ms. Smith for the DPP's office also made supplemental submissions on this point. She said that while she acknowledged the general rule in *Da Costa Hall*, it was her position that the Appellant in the case at bar should not be given full credit because of infractions he committed while he was on remand. She argued that the learned trial judge rightly took into account the mitigation and aggravating factors when passing sentence but agreed that the judge did not take into account the time spent by the appellant on remand. By the time that the Appellant had been convicted for the offences of handling stolen goods and possession of an imitation firearm with criminal intent on 7<sup>th</sup> May 2013, he had been on remand for 9 months and 18 days, and that period should have been taken into account by the learned trial judge and deducted from the length of sentence to be imposed for manslaughter. Ms. Smith also submits that the Appellant should also

have been credited with the 1 year and 14 days period he spent on remand for the offence of murder after he served the five-year sentence.

[16] Ms. Smith further relied on *Da Costa Hall* which listed some of the circumstances under which a sentencing court may depart from the general rule that a convicted person must be given full credit for any time spent in custody awaiting trial. It is her submission that the case at bar would fall under the category identified by the CCJ as: “**where the defendant was serving a sentence of imprisonment during the whole or part of the period spent on remand.**” Since the Appellant had been serving a 5-year sentence for part of the period when he was remanded for murder, Ms. Smith submits that it is in the discretion of this court to determine whether the full five years or just a part of it will be credited towards the final sentence for murder.

[17] Ms. Smith argues that since the aggravating and mitigating factors were properly considered by the learned trial judge, the starting point of the sentence should be from the lower end of 16 years.

### **Decision**

[18] We are grateful to both counsel for all their submissions which were of invaluable assistance to the court in this appeal. Having carefully considered the submissions and the authorities presented to us, we are of the view that we can interfere with the sentence imposed by the trial judge for two reasons: (a) the trial judge applied a starting point that was excessive and not within the range for similar manslaughter cases and (b) the deduction of 1/3 sentence was not given to the Appellant for his guilty plea. This is a re-sentencing exercise and the jurisdiction for us to set aside the sentence and impose a new sentence lies in section 216(3) of the Senior Courts Act 2022 Act No. 27 of 2022:

*“On an appeal against sentence the Court shall, if it thinks that a different sentence should have been passed, quash the sentence passed at the trial and pass such other sentence*

*warranted in law by the verdict (whether more or less severe) in substitution therefore as it thinks ought to have passed, and in any other case shall dismiss the appeal.”*

[19] We agreed with both counsel that the learned trial judge erred in her approach to sentencing in that she started the sentence from 20 years instead of following the range of 15 to 25 years as set out for different types of manslaughter in the *Clifford Hyde* case. The sentencing range for this type of manslaughter by stabbing in the case at bar is 15 to 25 years. In the view of the Court an appropriate starting point in the instant matter is 16 years imprisonment in light of the aggravating and mitigating factors of the offence. Two years should be added for the following aggravating factors: the gravity of the offence of manslaughter, the fact that the deceased was unarmed at the time of the fight, and the fact that the Appellant was not a first-time offender at the time of the incident. Three years should be discounted for the following mitigating factors: the fact that the Appellant was only 18 years old at the time of the incident, the fact that the Appellant has expressed remorse, the fact that the deceased was the person who had started the altercation and the fact that the Appellant had only inflicted one stab wound.

The total years being  $16 + 2 = 18 - 3 = 15$  years

*Deduction for guilty plea*

[20] The Appellant should be given a 1/3 deduction for his guilty plea. 1/3 of 15 years is 5 years. 15 years less 5 years = 10 years. The notional sentence is therefore 10 years.

*Remand period to be deducted from sentence*

[21] The total remand time spent by the Appellant for manslaughter was 6 years and 10 months (9 months 18 days before conviction for firearm offence, 5 years for the firearm offence, plus 1 year and 14 days after serving 5 years for the firearm offence) The total remand time for murder not considering the 5 years sentence for the other offence is 1 year 10 months. We are of the view that the Appellant should not be given a full credit for this entire period of 6 years and 10 months for two reasons: (a) He was already serving a 5-year sentence for possession of stolen

goods and an imitation firearm whilst he was remanded for murder and (b) the infractions that he committed while he was in prison. We are of the view that the Appellant should be credited with 1 year 10 months plus half of the 5-year period which is 2 years and 6 months, the total credit being 4 years 4 months. The notional sentence of 10 years less 4 years 4 months amounts to 5 years 8 months to be served from 20<sup>th</sup> May 2019.

*Sentence imposed by this Court*

[22] The sentence of 20 years imposed in the court below is quashed. This Court imposes a sentence of 5 years 8 months on the Appellant to be served from 20<sup>th</sup> May 2019.

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ARANA, JA

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HAFIZ-BERTRAM, P

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BULKAN, JA