

IN THE SUPREME COURT OF BELIZE, A.D. 2018
CRIMINAL JURISDICTION

CENTRAL DISTRICT

INDICTMENT No. C51/2018

THE QUEEN

V

STEVEN GOMEZ

BEFORE: Honourable Mr. Justice Francis M. Cumberbatch

APPEARANCES: Mrs. Portia Ferguson - Counsel for the Crown
Mr. Oswald Twist - Counsel for the Accused

TRIAL DATES: 30th July 2018.
13th September 2018.

SENTENCING

Judgment on Sentencing

[1] The Accused was indicted by the Director of Public Prosecutions for the offence of murder for that he on the 16th day of August, 2014, at Unitedville Village in the Cayo District murdered Victor Vargas (“the Deceased”) contrary to *Sections 117 and 106(1) of the Criminal Code Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2011*. At his arraignment, he entered a plea of not guilty and after a fully contested trial he was found guilty of the lesser offence of manslaughter by virtue of provocation pursuant to the provisions of *Section 117 of the Criminal Code*.

The Facts

[2] During the early hours of the morning on the 16th day of August, 2014, the Accused and the Deceased met each other on the roadway in United Village. They then proceeded to walk home. Whilst doing so an argument commenced between them. The argument morphed into an oral altercation and eventually the Accused took away a cup from the Deceased and urinated in it. He thereafter returned the cup now containing his urine to the Deceased to drink same. The Deceased responded by cuffing the Accused and the fight continued. During the fight the Accused stabbed the Deceased with a knife which he took from his pocket. The Deceased suffered stab wounds to his neck and head, and later succumbed to his injuries.

The Hearing

[3] After his conviction, the Court ordered a sentencing hearing be held to assist it in determining an appropriate sentence herein. The Court heard submissions from counsel for the Accused and Crown Counsel.

[4] Mr. Twist submitted that the Accused was 19 years old at the time of the commission of the offence. His father had recently died and he was under the influence of alcohol. He admits to one previous conviction for possession of dangerous drugs committed in 2011. The Court was also asked to take into consideration the time spent in custody by the Accused whilst on remand.

[5] The Accused expressed his condolences to the family of the Deceased for the loss of their family member, and sought leniency from the Court. Crown Counsel addressed the Court on the victim impact statements obtained and the

report from the prison which speaks of 17 infractions committed by the Accused whilst on remand.

[6] The Court also received written testimony from character witnesses for the Accused. Crown Counsel tendered victim impact statements from the common-law wife and mother of the Deceased.

[7] The Court received authorities from both counsel on sentencing guidelines for the offence of manslaughter.

The Law

[8] The principles of sentencing namely; Retribution, Deterrence, Prevention and Rehabilitation were laid down by Lawson LJ in the celebrated case of *The Queen v James Henry Sergeant 1974 60 Cr. App. R. 74.*, in that decision Lawson LJ stated that, “*any judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts of the case to see which of them has the greatest importance in the case with which he is dealing.*”(Emphasis mine)

I will now proceed to apply these principles to the *sae at bar*.

Retribution

[9] The Accused stands convicted for the offence of manslaughter by reason of provocation. The evidence disclosed that the Accused for reasons unknown was armed with a knife on that fateful night. His unjustified use of that knife resulted in the loss of a human life. The consequences to the family of the Deceased as stated in the victim impact reports are devastating and irreparable.

[10] The prevalence of the offence of homicide in this jurisdiction cannot be trivialized; and as such, the Court must of necessity show its abhorrence for this kind of unlawful conduct. However, in this case, the Court must consider that the Accused committed the offence after he was provoked and that he is convicted of the offence of manslaughter.

Deterrence

[11] The application of this principle is two-fold. Firstly, to deter the Accused by imposing a sentence to ensure that he would not re-offend in like manner on his release from custody; and secondly, to ensure that members of the wider public who contemplate committing the offence of homicide which is prevalent in the society to desist from so doing.

[12] The Accused is seised of one previous conviction for possession of dangerous drugs committed in the year 2011 for which he served a sentence of two months imprisonment. This offence is unrelated to the offence of homicide.

[13] However, the report from the Kolbe Foundation paints a bleak picture of his conduct whilst on remand. Of the 17 infractions committed by him, four were for possession of an authorized article, to wit a “borer” and a “hacksaw blade.” One offence was for stabbing an inmate, whilst another was for punching an inmate and causing him a wound. There were also offences of using threatening language to inmates and prison officers.

[14] Thus, it is imperative that the Court must impose a suitable sentence to deter the Accused from committing offences of violence on his release from custody.

Prevention

[15] Prior to the commission of this offence, the Court has no evidence before it to the effect that the Accused has a penchant for violence and/or violent conduct, or that he is considered to be a danger to society. Indeed, the unchallenged oral statements from character witnesses do not allude to him being known for committing offences of violence.

[16] Whilst his report from the Kolbe Foundation is not generally favorable to him, the Court has observed that the last infraction occurred on the 29th May, 2017. Moreover, in January of this year he participated in a program for Conflict Management and has to date appear to have been a model prisoner.

[17] Accordingly, in the absence of reliable evidence that the Accused is considered to be a danger to the community, I find that this principle is not applicable to him.

Rehabilitation

[18] The Court holds the view that the rehabilitation of an offender to assist in his reintegration into society is essential. As stated aforesaid, there has been an absence of reports of infractions committed by him whilst on remand since May of 2017. He has also participated in the Conflict Management Program.

[19] These matters augur well for his rehabilitation. Moreover, his character witnesses have indicated their willingness to assist him in his rehabilitation on his release from prison. I must, however, mention that the Accused who sought and was granted leave to make a statement to the Court by way of mitigation offered his condolences to the family of the Deceased; but, did not express remorse for

what he has done. It follows that he has not taken responsibility for his actions, a factor which may inhibit his rehabilitation.

Aggravating and Mitigating Factors

[20] After having considered the facts and circumstances herein, I find the following to be the aggravating and mitigating factors:

[21] Aggravating Factors

1. The senseless loss of a human life;
2. The use of a knife in the commission of this offence;
3. The prevalence of the offence of homicide within the jurisdiction;
4. The absence of remorse. The Accused has not taken responsibility for his actions.

[22] Mitigating Factors

1. The relatively youthful age of the Accused at the time of the commission of this offence.

Sentence

[23] In *Blackstone's Criminal Practice 2009 at Appendix 8 Sentencing Guidelines Council Guidelines* under the heading **Manslaughter By Reason Of Provocation**, it is suggested that the following factors are to be taken into consideration by The Sentencing Court.

1. The sentences for public protection must be considered in all cases of manslaughter;

2. The presence of any of the generally aggravating factors identified in the Council's *Guideline Overarching Principles; Seriousness* or any of the additional factors identified in this guideline will indicate a sentence above the normal starting point;
3. This offence will not be an initial charge but will arise following an initial charge of murder. The council Guideline *Reduction in sentence for a guilty plea* will need to be applied with this in mind. In particular, consideration will need to be given to the time at which it was indicated that the Defendant will plead guilty by reason of provocation;
4. An assessment of the degree of provocation as shown by its nature and duration is the critical factor in the sentencing decision;
5. The intensity , extent, and nature of the loss of control must be assessed in the context of the provocation that preceded it;
6. Although there will usually be less culpability when the retaliation to provocation is sudden, it is not always the case that greater culpability will be found where there has been a significant lapse in time between the provocation and the killing;
7. It is for the Sentencer to consider the impact on an offender of provocative behaviour that has built up over a period of time;
8. The use of a weapon should not necessarily move a case into another sentencing bracket;
9. The use of a weapon may reflect the imbalance in strength between the offender and the victim and how that weapon came to hand is likely to be far more important than the use of the weapon itself;
10. It will be an aggravating factor where the weapon is brought to the scene in contemplation of use before the loss of self-control (which may occur sometime before the fatal incident);

11. Post offence behavior is relevant to the sentence. It may be an aggravating or mitigating factor. When sentencing the judge should consider the motivation behind the offender's actions.

[24] In *The Queen v Ian Trevor Bancroft (1981) 3 Cr. App. R. (s) 119*, a decision of the English Court of Appeal Shaw LJ stated:

“Theoretically and logically, though in a sense remote from human affairs, if there is a successful defense of provocation, and it is recognized by the jury that the Accused whom they are trying was not in possession of his self-control because of conduct of his victim, one could argue that the sentence should be virtually a nominal one. However, it has to be recognized in human affairs, notwithstanding that a man's reason might be unseated on the basis that the reasonable man would have found himself out of control, that there is still in every human being a residual capacity for self-control, which the exigencies of a given situation may call for. That must be the justification for passing a sentence of imprisonment, to recognize that there is still some degree of culpability, notwithstanding that the jury has found provocation.”(Emphasis mine)

[25] I have considered and applied the guidelines in Blackstone aforesaid and the dictum of Slaw LJ in *The Queen v Ian Trevor Bancroft*. I am satisfied that both prior to and during the unlawful fight between the Accused and the Deceased there were sufficient acts of provocation to cause him to lose his self-control. This was exacerbated by the alcohol he had earlier consumed and the death of his father.

[26] However, I am still of the view from all of the circumstances of this case that the Accused was well aware of what was going on that night and when he

chose to use the knife, he carried on his person, in what was essentially a fist fight, he still had the residual capacity for self-control.

[27] I further find that, the introduction of a knife to a fist fight reflected the imbalance between the Accused and the Deceased during the unlawful fight. However, the Court is also required to strike a balance between the Defendant's conduct under provocation and his residual degree of culpability.

[28] I will now consider the personal circumstances of the Accused. It is common ground that he was 19 years old at the time of the commission of this offence. Thus, though, he had attained the age of majority he had not reached the stage of full maturity. In the words of one of his character witnesses, the Accused "grew up in an abusive home with no father or male figure to look up to or to teach him moral values." Indeed, the report from the Kolbe Foundation indicates that he had his first stint as a prisoner in December 2011 when he was just 16 years old by serving two months imprisonment for possession of dangerous drugs.

[29] The offence for which the Accused is convicted carries a maximum sentence of life imprisonment. In *Yong Sheng Zhang v The Queen Criminal Appeal No. 13 of 2009*, Barrow JA opined thus at paragraph 14, to wit:

"The judgment of Sosa JA in Criminal Appeal No. 2 of 2006 D.P.P. v Clifford Hyde at paragraph 12establishes that for the standard street fight type of manslaughter case the usual range of sentence is between 15 to 20 years imprisonment. The fact that there is a usual range of sentence underscores the fundamental truth that the starting point in imposing a sentence is not usually the maximum penalty. As a matter of reasoning the maximum penalty must be considered as appropriate for only the worst

cases. The features of this case make clear that it does not fall into the category of worst cases. A significant difference exists between this case of unintentional homicide and homicide cases “on the borderline of murder”, in which this court has upheld sentences of 25 years imprisonment;...”

[30] I find that this case cannot be categorized as one of the worst cases within the jurisdiction. However, the gravity of this offence must be recognized and the Accused must be appropriately punished for taking an innocent life in the circumstances in which it was done.

[31] Thus, taking into consideration all the circumstances of this case aforesaid, I find that a sentence at the lower end of the scale enunciated by Sosa JA and approved and accepted by Barrow JA in *Yong Sheng Zhang v The Queen* would be appropriate. Accordingly, I find a benchmark of 15 years imprisonment is appropriate.

[32] The report from the Kolbe Foundation discloses that the Accused became a remand prisoner for this offence on the 24th September 2014. As such, I shall deduct four years from this sentence which represents the time he has spent on remand whilst awaiting his trial. Thus, he shall serve a period of 11 years imprisonment commencing today.

Dated on **Friday 14th day of September, 2018.**

Honourable Justice Mr. Francis M. Cumberbatch
Justice of the Supreme Court