

**IN THE SUPREME COURT OF BELIZE, A.D. 2021
CRIMINAL JURISDICTION**

CENTRAL DISTRICT

Indictment No. C52 of 2018

THE QUEEN

v.

SHEMAR SANTOS

BEFORE: Honourable Justice Mr. Francis M. Cumberbatch

APPEARANCES: Mr. Cecil Ramirez S.C.C. along with Ms. Natasha Mohamed – Counsel for the Crown
Mr. Ronell Gonzalez – Counsel for the Accused

TRIAL DATES: 20 February 2020; 15, 16, 22, 23, 25, 26, 29 and 30 June, 2020; 2, 6, 16, 23, July 2020; 13 August 2020; 24 September 2020; 24 March 2021.

JUDGMENT ON SENTENCING

[1] The convicted man was indicted by the Director of Public Prosecutions for the offence of murder contrary to sections 117 and 106(1) of the *Criminal Code* for that he on the 28th day of February, 2017, at Teakettle Village, in the Cayo District, murdered Ernesto Wiltshire Jr. ('the Deceased'). At his arraignment, the convicted man entered a plea of not guilty and as a result a fully contested trial was held before a judge alone pursuant to the provisions of section 65a of the *Indictable Procedure Act*. At the conclusion of his trial, the convicted man was found guilty of the offence of manslaughter by

extreme provocation and as a result a sentencing hearing was held to determine what would be an appropriate sentence to be imposed herein.

The Facts

- [2] The convicted man and the Deceased together with other friends were hanging out in the village. At some stage, the Deceased and the Accused, were involved in an oral altercation which involved calling each other names. The evidence further reveals that, the name calling morphed into the Deceased approaching the Accused, whilst he the Deceased, was carrying a kitchen knife approximately ten inches long. The convicted man who was in possession of a machete used same to inflict chop wounds to the head of the Deceased.
- [3] Dr. Loyden Ken an Anatomical Pathologist conducted an on-site post mortem examination on the body of the Deceased. His findings included multiple chop wounds, five in number, to the head and neck regions of the body. The doctor opined that the five wounds were inflicted by a heavy object with sharp edges. He found that the injuries were consistent with the use of a machete. He further opined that, all of the aforesaid injuries could have been caused by the same instrument and that severe force was used to inflict the injuries seen and examined by him. Dr. Ken stated that, in his opinion

the cause of death is consistent with multiple traumatic injuries with external exsanguination due to multiple chop wounds to the head and neck regions.

The Hearing

- [4] The Court ordered that a social inquiry report and a report from the prison be provided for the sentencing hearing. The Court also granted leave for the defence to call character witnesses. They all spoke of the convicted man in glowing terms. The convicted man himself also addressed the court. He accepted responsibility for his actions on that fateful day and expressed remorse for his conduct.
- [5] The social inquiry report reveals that the convicted man's expressed goal is to re-enroll in a secondary institution to complete his education as he was forced to drop out of the Cayo Christian Academy. He also expressed his regret to the social worker for the way things turned out on that fateful day and wished he had dealt with the matter differently.
- [6] The report also discloses victim impact statements from the mother and siblings of the Deceased.
- [7] The Court heard submissions from both counsel as to what constitutes an appropriate sentence herein.

The Law

[8] A convenient starting point would be to consider and apply the four principles of sentencing, namely: retribution, deterrence, prevention, and rehabilitation. These principles were laid down by Lawson LJ in the celebrated case of *R 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.”

Retribution

[9] Retribution at first glance tends to reflect to the Old Testament biblical concept of an eye for an eye, which is not tenable in the law. It is rather a reflection of society’s intolerance for criminal conduct. Lawton LJ stated at page 77 that:

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

[10] The facts disclose that the convicted man along with other friends including,

the Deceased, were out having fun as young men of their ages are wont to do. At some point in time, the friendly atmosphere was interrupted by an argument between the convicted man and the Deceased. The Deceased who was carrying a knife approached the convicted man who was carrying a machete. The convicted man swung the machete at the Deceased and inflicted severe chop wounds to him which resulted in his death.

[11] The brutality of this attack on the Deceased was illustrated in the testimony of Dr. Ken aforesaid who described the external injuries to the body of the Deceased as multiple chop wounds inflicted with severe force to the head and neck. The Court must show its abhorrence for this type of conduct by the sentence it imposes.

Deterrence

[12] Deterrence is general as well as specific in nature. The former is intended to be a restraint against potential criminal activity by others; whereas, the latter is a restraint against the particular criminal relapsing into recidivist behaviour.

[13] It is common ground that the convicted man is a first offender and has revealed his plans for the future as a law abiding citizen. Thus, it seems unlikely that this convicted man will relapse and commit further acts of violence with similarly devastating consequences.

[14] The court is well aware however of the upsurge of cases of homicide within

this jurisdiction. Thus whilst this principle may not be applicable to the convicted man the court must apply it as a restraint to those members of the wider public who are contemplating a life of violent crime.

Prevention

[15] This principle is intended to protect the society from those who persist in high rates of criminality. For some offenders, the sound of the shutting iron cell door may have a deterrent effect. Some, however, never learn lessons from their incarcerations and the only way of curbing their criminality is through protracted sentences with the objective of keeping them away from society. Such sentences are more suitable for repeat offenders.

[16] I have taken into account the positive steps taken by the convicted man to improve himself and the glowing reports of him from his character witnesses. Thus, I find that this principle does not apply to him.

Rehabilitation

[17] As stated aforesaid the report on the convicted man from the Belize Central Prison reveals that he has already completed certain rehabilitative programs to wit:

1. Certificate of completion of restore small groups programs “Journey to a new beginning after a loss: Freedom from the pain of grief and disappointment.”

2. Certificate of completion Remand Rehabilitation Centre “the gangs’ education and treatment program.”

[18] The convicted man has also evinced the intention to re-enrol in a secondary school to continue and complete his secondary school education. These matters auger well for the convicted man’s rehabilitation. However, on a consideration of the degree of severity of the injuries inflicted to the Deceased by the convicted man I find that he is in need of counselling in anger management and dispute resolution. Indeed, in his interview with the social worker he indicated his regret that he did not walk away and find another way to handle the situation between him and the Deceased. However, his family members have expressed their support for him upon his release from incarceration.

Aggravating and Mitigating Factors

[19] I find the following to be the aggravating and mitigating factors herein.

Aggravating Factors

1. The seriousness of the offence committed;
2. The level of brutality displayed in the commission of this offence as was disclosed in the findings of the pathologist;
3. The effect of the death of the Deceased on his family as stated in the victim impact statements;

4. The use of a dangerous weapon, a machete;
5. The prevalence of the offence of homicide within the jurisdiction.

Mitigating Factors

1. The remorse expressed by the convicted man;
2. The convicted man is a first offender;
3. The convicted man has accepted full responsibility for his actions;
4. The positive steps taken by way of rehabilitation.

Sentence

[20] 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. An assessment of the degree of provocation as shown by its nature and duration is the critical factor in the sentencing decision;

4. The intensity, extent, and nature of the loss of control must be assessed in the context of the provocation that preceded it;
5. 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;
6. The use of a weapon should not necessarily move a case into another sentencing bracket;
7. 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;
8. 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);
9. 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.

[21] 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.”

[22] I will consider and apply the principles aforesaid to the facts and circumstances herein. The convicted man at the time of the commission of this offence was just 18 years old. The evidence of provocation consists of the Deceased calling the convicted man names followed by him advancing to the convicted man whilst armed with a knife. Though the calling of names may be sufficient to cause the recipient thereof to be provoked, when

combined with an act of aggression by the name caller the acts amounting to extreme provocation are taken to another level.

[23] It is common ground that the machete in the possession of the convicted man was primarily for cutting coconuts and watermelons. This instrument was neither acquired nor kept or introduced by the convicted man for the commission of this offence. Thus, I do not find that the use of the machete in the circumstances should take this case to a higher sentencing bracket.

[24] 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 12.... establishes 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 sentencing, 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...”

- [25] After having conducted a balancing exercise between the aggravating and mitigating factors, I find that the aggravating factors outweigh the mitigating ones.
- [26] Notwithstanding the level of brutality and severity in the infliction of the fatal injuries, I do not find that this case could be categorized as one of the worst cases within the jurisdiction. However, the gravity of this offence must be recognized and the convicted man must be appropriately punished for taking an innocent life in the manner and circumstances in which it was done.
- [27] 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 17 years’ imprisonment is appropriate.
- [28] The report from the Kolbe Foundation discloses that the Accused became a remand prisoner for this offence on 7th of March, 2017, 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 13 years' imprisonment commencing today.

Dated this **24th day of March, 2021.**

Honourable Justice Mr. F M Cumberbatch
Justice of the High Court of Belize
Central Jurisdiction
BELIZE