**IN THE SENIOR COURTS OF BELIZE**

**CENTRAL SESSION-BELIZE DISTRICT**

**IN THE HIGH COURT OF JUSTICE**
**(CRIMINAL JURISDICTION)**

**INDICTMENT NO: C81 OF 2016**

**THE KING**

**and**

**CARL LINO**

Prisoner

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| **Before:** | **The Honourable Mr. Justice Nigel Pilgrim** |
| **Appearances:** | **Ms. Sheiniza Smith, Senior Crown Counsel for the Crown.**<br>**Ms. Virginia Requena for the Prisoner.** |
| **Date of hearing:** | **10th November 2023.** |
| **Date of Delivery:** | **14th November 2023.** |

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**USE OF DEADLY MEANS OF HARM WITH INTENT TO CAUSE GRIEVOUS HARM-MAXIMUM SENTENCING INDICATION-SENTENCING**

**[1]** Carl Lino ("the Prisoner") was indicted on 3rd October 2016 for the November 2014 offence of use of a deadly means of harm, to wit, a firearm, with intent unlawfully to cause grievous harm to Andrew Tate ("the VC"), contrary to section 83(b) of the **Criminal Code**[1] ("the Code").

**[2]** The Prisoner during case management of this matter on 26th September 2023 telegraphed through counsel that he may have been minded to seek a sentencing indication from this Court. This was swiftly followed by a filed application in the prescribed form that same day. Agreed facts were sent to the Court on 29th September 2023. The parties were given the opportunity to be heard, pursuant to

[1] Chapter 101 of the Substantive Laws of Belize, Revised Edition 2020

Direction 3.8[2] of the Practice Direction, **Sentence Indications (Re-issue)**[3], ("the PD") on the application for the indication but both chose not to address the Court.

**[3]** The Court gave a maximum sentence indication of 4 years imprisonment on 5th October 2023. The Prisoner accepted that indication, before its expiry by written notice on 12th October 2023. The Prisoner was re-arraigned and pleaded guilty to the sole charge on the indictment on 13th October 2023. The Court conducted an enquiry into the guilty plea as required by Rule 9.13 of the **Criminal Procedure Rules 2016**[4]. The Prisoner himself accepted that he entered the guilty plea of his own free will, that he understood that he may be sentenced to imprisonment if he pleaded guilty, and that he was pleading guilty because he was guilty. The Court consequently accepted the guilty plea. The Prisoner also accepted the facts read out by the Crown.

**[4]** The Court having accepted the guilty plea, barring exceptional circumstances, pursuant to Direction 11.1[5] of the PD, cannot sentence the Prisoner to a term of imprisonment greater than 4 years.

## The Law

**[5]** The offence at bar is defined in the Code, where relevant, and the maximum penalty is, as follows:

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[2] *"3.8 Where the court proposes to grant a sentence indication, the court shall give both sides an opportunity to be heard on the matter. Where appropriate, the attorneys may provide references to the relevant statutory powers of the court, relevant sentencing guidelines and authorities, and such other assistance as the court may require."*

[3] This Practice Direction was gazetted on 16th May 2022.

[4] *"9.13 (i) Before accepting a plea of guilty to an indictment or any part thereof the Judge must satisfy him or herself, either by questioning the Defendant personally or by calling upon counsel to lead the questioning, that the Defendant committed the alleged offence(s), that the plea is entered voluntarily and that it is made with an appropriate understanding of the consequences."*

[5] *"11.1 An indication, once given, is, save in exceptional circumstances, binding on the judge who give it, and any judge who becomes responsible for the case. In circumstances where a judge proposes to depart from a sentence indication this must only be done in a way that does not give rise to unfairness."*

*"83. Every person who uses a ...firearm...or any explosive, corrosive, deadly or destructive means or instrument, shall–*

*...*

*(b) if he does so with intent unlawfully to ... cause grievous harm to a person, be liable to imprisonment for ten years;"*

**[6]** The ingredients of the offence in the Court's view are as follows; (i) the Prisoner must have used a firearm; and (ii) the Prisoner intended to cause grievous harm[6] to the VC.

**[7]** In determining the propriety or otherwise of a custodial sentence on these facts the Court must have regard to the provisions of the **Penal System Reform (Alternative Sentences) Act**[7],(the "PSRASA") which read, where relevant:

*"28.-(2) ...**the court shall not pass a custodial sentence on the offender unless it is of the opinion**,*

*(a) **that the offence was so serious that only such a sentence can be justified for the offence**;*

*...*

*31.-(1) ... a court in sentencing an offender convicted by or before the court shall observe the general guidelines set forth in this section.*

*(2) The guidelines referred to in subsection (1) of this section are as follows,*

*1. **The rehabilitation of the offender is one of the aims of sentencing**...*

*2. **The gravity of a punishment must be commensurate with the gravity of the offence**...." (emphasis added)*

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[6] See the Code: *96. "Harm" means any bodily hurt, disease or disorder, whether permanent or temporary;*
*"grievous harm" means any harm which amounts to a maim or dangerous harm as hereinafter defined, or which seriously or permanently injures health, or which is likely to injure health, or which extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, member or sense;*
*the destruction or permanent disabling of any external or internal organ, member or sense;*

[7] Chapter 102:01 of the Substantive Laws of Belize, Revised Edition, 2020, see section 25

**[8]** The Court now looks to the guidance of the apex court, the Caribbean Court of Justice (the "CCJ") in the Barbadian case of **Teerath Persaud v R**[8] on the issue or the formulation of a just sentence, per Anderson JCCJ:

> *"[46]* ***Fixing the starting point is not a mathematical exercise; it is rather an exercise aimed at seeking consistency in sentencing and avoidance of the imposition of arbitrary sentences. Arbitrary sentences undermine the integrity of the justice system****. In striving for consistency,* ***there is much merit in determining the starting point with reference to the particular offence which is under consideration, bearing in mind the comparison with other types of offending, taking into account the mitigating and aggravating factors that are relevant to the offence but excluding the mitigating and aggravating factors that relate to the offender****. Instead of considering all possible aggravating and mitigating factors only those concerned with the objective seriousness and characteristics of the offence are factored into calculating the starting point****. Once the starting point has been so identified the principle of individualized sentencing and proportionality as reflected in the Penal System Reform Act is upheld by taking into account the aggravating and mitigating circumstances particular (or peculiar) to the offender and the appropriate adjustment upwards or downwards can thus be made to the starting point. Where appropriate there should then be a discount for a guilty plea****. In accordance with the decision of this court in R v da Costa Hall full credit for the period spent in pre-trial custody is then to be made and the resulting sentenced imposed****." (emphasis added)*

**[9]** The Court is also guided by the decision of the CCJ in **Calvin Ramcharran v DPP**[9] on this issue, per Barrow JCCJ:

> *"[15] In affirming the deference an appellate court must give to sentencing judges, Jamadar JCCJ observed that* ***sentencing is quintessentially contextual, geographic, cultural, empirical, and***

[8] (2018) 93 WIR 132
[9] [2022] CCJ 4 (AJ) GY

***pragmatic. Caribbean courts should therefore be wary about importing sentencing outcomes from other jurisdictions whose socio-legal and penal systems and cultures are quite distinct and differently developed and organised from those in the Caribbean.***

*[16] Jamadar JCCJ noted that in 2014 this Court explained the multiple ideological aims of sentencing.* ***These objectives may be summarised as being: (i) the public interest, in not only punishing, but also in preventing crime ('as first and foremost' and as overarching), (ii) the retributive or denunciatory (punitive), (iii) the deterrent, in relation to both potential offenders and the particular offender being sentenced, (iv) the preventative, aimed at the particular offender, and (v) the rehabilitative, aimed at rehabilitation of the particular offender with a view to re-integration as a law abiding member of society.***

*[18]...* ***to find the appropriate starting point in the sentencing exercise one needed to look to the body of relevant precedents, and to any guideline cases (usually from the territorial court of appeal).*** *" (emphasis added)*

## The Facts

**[10]** The Crown's case is that the Prisoner at around 2:05 p.m. on 12th November 2014 fired three shots with a firearm while the VC was talking to someone at North Front Street, Belize City. The VC discovered he was shot to the right lower side of the back of his head.

**[11]** Two police officers in close proximity pursued the Prisoner who took out a firearm. Consequently, the officers fired shots at him. The officers eventually apprehended the Prisoner and retrieved his firearm. The Prisoner was shot in the pursuit.

## Analysis

**[12]** Belize does not yet have formal sentencing guidelines, however, the Court found great assistance from the Eastern Caribbean Supreme Court's, **"A Compendium Sentencing Guideline of The Eastern Caribbean Supreme Court, Violence**

**Offences"**[10] (the Eastern Caribbean Sentencing Guidelines or "the ECSG"). The Court considers the ECSG in its sentencing process in reliance of the dicta of the CCJ in **Linton Pompey v DPP**[11] per Jamadar JCCJ:

> ***"[111] Thus, in so far as one may wish to look to other jurisdictions for trends in sentencing, one should first look to relatively comparable jurisdictions, such as those in this region....As I have already alluded to, a truly Caribbean jurisprudence must be born and grounded in the sitz im leben of Caribbean peoples and Caribbean spaces."*** *(emphasis added)*

**[13]** However, the Court notes that guidelines are not a strait-jacket and that judicial discretion must remain at the heart of the sentencing process, as noted by the CCJ in the Barbadian case of **Burton and Anor. v R**[12].

**[14]** This offence would be considered under the rubric of "inflicting unlawful violence with intent to cause really serious harm" under the ECSG. The Court does not have any agreed facts to assess the consequences of the harm of the offending as it has no evidence as to the impact of the offence on the VC. The Court is unlikely to have that information as Ms. Smith for the Crown indicated that it would not be providing a victim impact statement as the VC is abroad and unlikely to return. In the absence of that information the Court then, in fairness to the Prisoner, would categorise the harm caused by the offence to the VC as in the Category 3, namely that there was lesser harm with no long-term impact[13].

**[15]** A feature of the offending relevant to the seriousness of the offence, in the Court's view, is that it appears that the Prisoner intended a more serious offence than occurred as he pulled a firearm for the police while pursued but was thwarted by the

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[10] Re-Issue, 12th April 2021. This is available electronically: https://cms.eccourts.org/wp-content/uploads/2021/11/Violence-Offences-Compendium-Guideline-November-2021-Re-Issue.pdf

[11] [2020] CCJ 7 (AJ) GY

[12] 84 WIR 84 at para. 13

[13] P. 5 ECSG

return of the officer's gunfire[14]. This factor would make the culpability of the Prisoner ranked on the ECSG scale as high.

**[16]** The recommended starting point under the ECSG is 45 percent of the maximum sentence[15]. This would result in a starting point of 4.5 years imprisonment. The Court thinks that that is an appropriate starting point in the circumstances of this case.

**[17]** The other generalised aggravating factors of the offending, in the Court's view, are as follows:

i. The offence is serious and prevalent. Belize is reeling from gun violence and the Court's sentence must reflect the significance of that factor.
ii. The VC was struck in the head.
iii. This was a brazen attack which happened in broad daylight.

**[18]** The Court does not include the use of a firearm as an aggravating factor as that is an element of the offence.

**[19]** The Court is of the view that there are no mitigating factors in relation to this offending.

**[20]** The Court would increase upwards the starting point by 2 years for the general aggravating features of the offending. This would then provide a sentence of 6.5 years imprisonment.

**[21]** In light of the guidance of the ECSG, the principles of sentencing adumbrated by the CCJ jurisprudence, and the statutory requirement under the PSRASA that the gravity of the punishment must meet the gravity of the offence, the Court thinks it appropriate to impose a custodial sentence. The public interest in punishing gun

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[14] P. 6 ECSG
[15] P. 7 ECSG

crime is served by a custodial sentence and the Court must deter others from involvement in gun violence.

**[22]** The Court then considers the aggravating factor in relation to the offender. This would be his previous convictions for rape, possession of an unlicensed firearm and ammunition and possession of controlled drugs. The Court does not take into consideration his minor disciplinary infraction at the prison for disrespecting an officer. The Court would increase the sentence by 1 year in this regard, making a sentence of 7.5 years imprisonment.

**[23]** The Court found that a powerful mitigating factor in favour of the offender is the expression of genuine remorse made by the Prisoner which was made even before the guilty plea was formally entered.

**[24]** The Court also considers, though not strictly a mitigating factor but which the Court must consider as outlined in the local Court of Appeal decision of **R v Albert Garbutt Jr.**[16], the length of time that this charge has been hanging over the head of the Prisoner, namely almost 9 years.

**[25]** The Court also considers the Prisoner's personal mitigation that he cared for his ailing father and supported his children.

**[26]** The Court considers that when the aggravating factors are weighed up on the scale with the mitigating factors in relation to the offender, and with an eye to facilitating the rehabilitation of the Prisoner, it results in a net deduction of 3 years from the sentence. This would leave a sentence of 4.5 years imprisonment.

**[27]** The Court will give the Prisoner a full one-third discount as he has saved judicial time, and not tried to cynically take legal advantage of the absence of the VC. This leaves a sentence of 3 years imprisonment. The Court is of the opinion that the

[16] Criminal Appeal No. 15 of 2009 at para. 15

sentence of 3 years imprisonment is commensurate with the seriousness of the offence, pursuant to section 29(2)(a) of the PSRASA.

**[28]** The Court considered as a guideline case the local Court of Appeal decision of **DPP v Eston Young**[17]. In that case the Court upheld a sentence of 5 years imprisonment for a guilty plea to the charge the Prisoner currently faces. In the Court's view that case is distinguishable on two bases, firstly it was a decision from 2006 before the process of sentencing was put on a more transparent basis as is now set out in *Persaud*, and secondly that prisoner had 9 previous convictions for attempted murder and various other forms of serious harm, which would justify a much harsher sentence as a serial offender.

**[29]** The time spent on remand for this matter is 279 days, rounded up, 10 months. That period is deducted from the 3-year sentence, which means that the sentence the Court would impose is 2 years and 2 months imprisonment.

**[30]** The Court is aware that the Prisoner is serving a 7-year sentence of imprisonment for an unrelated offence. The Court is mindful of the provisions of section 161 of the **Indictable Procedure Act**:

> *"161. Where the court sentences any person to undergo a term of imprisonment for a crime, and the person is already undergoing, or has been at the same sitting of the court sentenced to undergo imprisonment for another crime, the court may direct that the imprisonment shall commence at the expiration of the imprisonment which the person is then undergoing, or has been so previously sentences to undergo, as aforesaid."*

**[31]** The Court is guided by the interpretation of that section by our Court of Appeal in **Winston Dennison v R**[18], that it requires an order by this Court as to how this sentence is going to run in relation to the one the Prisoner is already serving.

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[17] Criminal Appeal No. 6 of 2006

[18] Criminal Appeal No 1 of 2013 at para. 38

**[32]** The Court is of the view that this sentence should be made to run consecutively to the sentence the Prisoner is now serving, the public of Belize is entitled to expect the Prisoner to account separately for this very serious offending. In this regard the Court relies on the decision of the CCJ in **Bridgelall v Hariprashad**[19] where they opined, per Saunders JCCJ, as he then was:

> *"[32] ... consecutive sentences may be given where the offences arise out of unrelated facts or incidents."*

## DISPOSITION

**[33]** The sentence of the Court is that the Prisoner is to serve a term of imprisonment of 2 years and 2 months consecutive to the sentence of 7 years imprisonment for the previous conviction for rape which the Prisoner is now serving.

**[34]** The Court would wish to thank the parties for all their invaluable assistance in their conduct of this matter, including Ms. Requena's stirring plea in mitigation, and ensuring that we all achieved the overriding objective of treating with the case justly. The Court would recommend the robust engagement of the Crown[20] and the private Bar with the PD and the sentence indication process, where appropriate, as an effective tool to assist to clear the criminal case backlog in Belize. This will also ensure all Belizean criminal defendants' constitutional right to trial in a reasonable time is observed by avoiding the courts' lists being clogged with matters that could be resolved without a trial. The parties would also be aided by the helpful clarification of the sentencing indication process by the Trinidadian Court of Appeal in **Orlando Alexis v The State**[21]**.** The PD is annexed to the judgment.

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[19] (2017) 90 WIR 300

[20] The Director of Public Prosecutions can also apply for an indication in certain circumstances, pursuant to Direction 3.1.2: *"3.1 The court may give a sentence indication:... 3 .1.2 On an application by the DPP prior to the acceptance of an offer by the defendant to enter a guilty plea to a lesser offence to the one for which he or she is indicated."*

[21] CR. App No. P 033/2019. This judgment is available electronically at: https://webopac.ttlawcourts.org/LibraryJud/Judgments/coa/2019/lucky/CrA_19_P033DD31Oct2023.pdf

Dated 14th November 2023

NIGEL C. PILGRIM
JUDGE OF THE HIGH COURT OF BELIZE
CENTRAL DISTRICT

Larnaca, Cyprus is the Liquidator, and any claims against this Company should be forwarded to the liquidator within 30 days from commencement."

**Interconsult Belize Limited**
*Registered Agent*

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**No. 298**

## SUPREME COURT OF BELIZE
## CRIMINAL PROCEDURE RULES

**PRACTICE DIRECTON**
**NO. OF 2022**

**SENTENCE INDICATIONS**
**(RE-ISSUE)**

This Practice Direction is made pursuant to the provisions in Rule 9.17 of the CPR 2016 and is applicable to indictable criminal matters heard before a judge of the Supreme Court of Belize. The principles enunciated in R v Goodyear will be followed with necessary amendments and adaptations thereto.

**1. PURPOSE**

1.1 The purpose of this Practice Direction is to provide for the procedure to be followed for an indication by a judge;

1.1.1 At any time prior to the commencement of a trial or hearing of any indictment;

1.1.2 At any stage during the course of a trial provided that a verdict has not been entered;

Of a likely sentence a defendant might receive if he or she pleads guilty at that time.

**2. CONTEXT**

2.1 In this Practice Direction:

2.1.1 "court" means the Supreme Court

2.1.2 "Judge" means a judge of the Supreme Court and a person appointed to act in that office.

**3. PROCEDURE**

3.1 The court may give a sentence indication:

3.1.1 If a defendant charged with a criminal offence makes an application, either on his own or through his counsel, for such an indication; or

3.1.2 On an application by the DPP prior to the acceptance of an offer by the defendant to enter a guilty plea to a lesser offence to the one for which he or she is indicated.

3.2 An application for a sentence indication must be made in the practice form set out in the Schedule to this Practice Direction.

3.3 A sentence indication may relate to:

(a) A sentence of a particular type;

(b) A sentence of a particular type within a particular range or a particular quantum;

(c) A sentence that would not be imposed; or

(d) A combination of sentences.

3.4 A sentence indication should be confined to the maximum sentence to be imposed if a plea of guilty were tendered at the stage of the proceedings at which the indication was sought. The judge should not indicate the maximum possible sentence following conviction after trial.

3.5 Subject to 3.6, the judge may grant a sentence indication if he or she is satisfied that the information available at that time is sufficient for that purpose.

3.6 Without limiting 3.5, the court shall have the following information before granting a sentence indication:

(a) A summary of the facts on which the sentence indication is granted, agreed on by the prosecution and the defence; and

(b) Information as to any previous conviction of the defendant.

3.7 The judge may request a Social Inquiry report to assist in granting a sentence indication.

3.8 Where the court proposes to grant a sentence indication, the court shall give both sides an opportunity to be heard on the matter. Where appropriate, the attorneys may provide references to the relevant statutory powers of the court, relevant sentencing guidelines and authorities, and such other assistance as the court may require.

3.9 The judge retains an unfettered discretion to refuse to give a sentence indication, with or without giving reasons for his or her refusal to do so.

3.10 The judge may also reserve his or her position until such time as he or she give an indication.

3.11 If a judge refused to give an indication it remains open to the defendant to request a further indication at a later stage.

3.12 An indication should not be requested if there is uncertainty between the prosecution and defence about an acceptable plea to the charge or any factual basis relating to the plea. If there is a basis for a plea, agreed by the prosecution and defence, it must be reduced into writing and a copy provided to the judge. Any basis of a plea will be subject to the approval of the court.

4. DEFENCE ATTORNEY

4.1 A defence attorney should not seek an indication without written, signed authority from the defendant that he or she wishes to seek an indication.

4.2 A defence attorney must inquire from the defendant whether he or she fully understands that:

(a) He or she should not plead guilty unless he or she is guilty;

(b) The indication reflects the situation at the time it is given only; and

(c) The indication only relates to matters about which an indication was sought and other proceedings which may follow automatically will not be dispensed with.

5. GRANT OF SENTENCE INDICATION

5.1 A sentence indication shall be granted in open court with a full recording of the entire proceedings.

5.2 The prosecution and defence attorneys and the defendant must be present.

6. RECORD OF SENTENCE INDICATION

6.1 The court shall record a sentence indication.

7. SECOND OR SUBSEQUENT SENTENCE INDICATION

7.1 The court may grant a second or subsequent sentence indication if since the previous sentence indication, there has been a change in circumstances that is likely to materially affect the question of the appropriate sentence type or quantum

8. DURATION OF SENTENCE INDICATION

8.1 A sentence indication has effect:

(a) Until the close of the date specified by the court; or

(b) If no date is specified, until the expiry of 5 working days after the date on which the sentence indication was granted;

(c) Where the sentence indication is sought during the course of a trial until the expiry of 2 working days after the date on which the indication was granted.

9. PUBLICATION OF INFORMATION

9.1 A person shall not publish any information about any request for a sentence indication or any indication that has been granted until after the defendant has been sentenced or the charge has been dismissed.

10. NON-ADMISSIBILITY OF SENTENCE INDICATION IN PROCEEDINGS

10.1 The fact that a defendant made a request for a sentence indication is not admissible in evidence in any proceedings. Further, any reference to the sentence indication hearing is not admissible is a subsequent trial.

**11. BINDING EFFECT OF SENTENCE INDICATION**

11.1 An indication, once given, is, save in exceptional circumstances, binding on the judge who give it, and any judge who becomes responsible for the case. In circumstances where a judge proposes to depart from a sentence indication this must only be done in a way that does not give rise to unfairness.

**12. AFFECT OF SENTENCE INDICATION ON APPEAL**

12.1 The defendant's entitlement to appeal against sentence will not be affected by the granting of a sentence indication by a judge.

**13. PRACTICE FORMS**

13.1 The Practice Forms are contained in the schedule to this Practice Direction.

**14. EFFECTIVE DATE**

14.1 This Practice Direction shall come into effect on the 16th day of May, 2022.

Made this 16th day of May, 2022

*Chief Justice*

## SCHEDULE

### PRACTICE FORMS

### SENTENCE INDICATIONS

Practice Direction No. of 2022

Form 1: Request for sentence indication

IN THE

[NAME OF COURT]

R.

v

[Defendant]

This request is made by [defendant] for the court to indicate:

- a sentence of a particular type
- a sentence of a particular type within a particular range or of a particular quantum
- a sentence that would not be imposed
- a combination of sentences