IN THE SUPREME COURT OF BELIZE

(CRIMINAL JURISDICTION)

CENTRAL DIVISION

INDICTMENT No. C33/2021

BETWEEN:

THE KING

and

[1] MARK AUGUST

[2] AVERY BAIN

Defendants

Appearances:

Mr. Robert Lord, Crown Counsel for the Crown

Mr. Oscar Selgado, Counsel for Both the Accused Persons

2023: June 22;

2023: November 10.

SENTENCING JUDGMENT

1. **SANDCROFT, J.:** On February 23, 2019 at about 10:00 a.m. the Complainant was standing on Antelope Street, Belize City, Belize in front of his family home which is number 6 Antelope. He was standing talking to his older brother Calbert Budd Jr., while talking he heard Mark August hollering at them that someone will die on this street today, he was trying not to pay him much mind while talking to his brother, in this time he was still hollering and threatening words; "he doesn't care if I had a license gun cause dem got bigger gun dan me." At this time the complainant answered and said, "why yuh nuh guh find sometin fi duh", he said back to me "just wait because I going for my gun and kill the two a unnu". Complainant then told his brother to let them go in the yard, they went to as much as the gate, the accused was about 100 feet away at that time. They went inside and stopped there and talked for about 3 to 5 minutes, that is when he heard more talking and shuffling, he then went out back on the street to his car to make sure it was locked, his brother was behind, that's when he heard a female voice said something that made him react and he looked in the direction where Mark was, he had a dark complexion person standing beside him who I know as Avery Bain, I then saw Mark August give him, Avery Bain a black in colour pistol, Avery Bain immediately advanced in my direction which is toward Antelope Street, on his way to Antelope Street he ran behind a wooden burgundy house that is on the street side, he then peeked out and pushed out his right hand and fired the pistol at me, he manage to shoot 3 to 4 shots before the complainant had a chance to take out his licensed firearm, as soon as he took out his licensed firearm, he returned fire, he managed to let go eight shots, while they were shooting at each other at the same time, as his clip emptied, Avery stopped shooting around the same time but he saw that the complainant was changing his clip and advancing towards him, he then ran in the direction of Gibnot Street through the yard. Half-way through the yard Mark August joined him running in the direction through Gibnot Street, in this time he was running in the direction of Antelope and Seagull Streets to the corner, to see exactly where they were going. When the complainant got to the corner of Seagull and Antelope

Streets, he saw Avery Bain and Mark August ran off Seagull into Gibnot, he fired one shot at them missing, he then stood at the corner of Antelope and Seagull, about a minute later he looked in the direction towards Central American Boulevard, he saw Avery Bain and Mark August jump over the drain from abandon yard into the street. As soon as they got unto Antelope Street, Avery Bain fired two shots towards him and he fired one shot back at them, at this time he saw two cycle policemen on separate cycles, one of them flew pass me but he managed to wave the second one down and told him what had just transpired, immediately after, there were like 5 police trucks on the scene, when he saw an officer in full khaki which is an inspector he believed, and went to him and surrendered his firearm with his license. Mark August was wearing a black shirt and a short blue jeans, it was a hot sunny day, bright. When the complainant first saw him on that day, he was about 3 to 5 feet away from him. Complainant was able to see Mark August's entire body, nothing was obstructing his view from seeing Mark August, Mark August was in his view for about 10 to 15 minutes the entire time of the incident. Yes he had seen Mark August before the 23rd of February 2019, many times before. Complainant had seen him at least 5 years before that day, knew him for at least 4 years, knew him by his full name. He would see Mark August almost every-day, sometimes many times for the day. The same yard he gave Avery Bain the pistol in, and that is one of the four yards that he hengs out in. And he likes to walk and ride pass complainant's family yard, many times for the day. The average distance most times between him and Mark August over the 4 to 5 years would be 6 to 20 feet because he would be on his verandah which is 16 feet away from the street.

2. The lighting condition would be in the day time and night time, there is a lamp post about 10 feet away from his yard. On average sometimes cars, trees when they are in the yard would be blocking his view from seeing him over the period before that day of the incident. Complainant would see his entire body over the period before that day of the incident.

3. If he were to see Mark August again he would be able to point him out, witness points to Mark August in the dock wearing a white shirt and a light blue pants with cuts in it.

4. Avery Bain was wearing a black tee shirt with trimmings on the end of the sleeves, around the neck and at the bottom of the shirt. And a short red Dickies. When complainant first saw Avery Bain on that day he got about 3 feet to me. The lighting condition was the sun was out bright and nothing was obstructing his view and he was able to see his entire body. The distance between Avery Bain and him was about 100 feet when he was shooting at him. Avery Bain was in his view for about 10 minutes for the entire incident. Complainant had seen and known Avery Bain before the day of the incident, about 3 years before the date, he would see him almost every-day, walking and riding pass on the street and in the yard where Mark gave him the firearm. The lighting condition was sometimes day and sunny and sometimes night but as he said before there is a lamp post 10 feet away from my house and if I am looking, Avery would be walking or riding pass. Sometimes, he would see his entire body, sometimes if he was in the yard he would see his head over the zinc fence, Avery has a big head. The average distance would be 10 to 15 feet away most of the time.

5. If he were to see Avery Bain again he would be able to point him out, witness points to Avery Bain in a grey shirt with yellow markings on it in the dock.

Sentencing Principles Discussion

6. The overarching principle for sentencing is proportionality, requiring that a sentence is proportionate to the seriousness of the offence.

7. When determining the proportionate sentence to be imposed, the court will have regard to the various purposes of sentencing:

> (1) In cases involving those aged 18 and over at date of conviction the court must have regard to the following:
>
> (a) Punishment
>
> (b) Crime reduction (including deterrence)
>
> (c) Reform and rehabilitation
>
> (d) Public protection
>
> (e) Making of reparation.

8. Determining seriousness involves numerous components:

> (1) Assess culpability and harm. Harm includes that caused, intended to be caused or harm which the offence might foreseeably have caused.
> (2) Previous convictions are to be treated as an aggravating factor. A previous conviction is an offence for which the conviction was obtained prior to the commission of the offence(s) before the court for sentence.[1]

9. In view of the seriousness of the use of deadly means of harm with intent to cause grievous harm of which the accused men pleaded guilty, the legislature has decreed that the court is obliged to impose a sentence of being liable to imprisonment for 10 years unless it is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence.

[1] Darrigan [2017] EWCA Crim 169

10. Punishment must fit the criminal, as well as the crime, be fair to society and be blended with a measure of mercy. When sentencing an accused, a court is required to consider the four objectives of punishment (deterrence, prevention, rehabilitation and retribution) in view of the triad of factors as set out in **S v Zinn**[2]. These factors are:

(i) the personal circumstances of the offender, including his character, conduct in life and personality, and everything that influenced the commission of the offence;

(ii) the nature and seriousness of the offence committed; and

(iii) the interests of the community, including the necessity for a level of uniformity in sentencing.

11. It is, ultimately, often a matter of reconciling competing but not incompatible interests in order to ensure a fair and just sentence. An appropriate and judicious balance must be struck. A sentencing court is under a duty to impose an appropriate sentence according to long-standing principles of punishment and judicial discretion.

12. Invariably there are overlaps that render the process unscientific; even a proper exercise of the judicial function allows reasonable people to arrive at varied and myriad conclusions.

13. In **S v Van Loggenberg**[3] Willis J said that a sentence has five important functions (at [6]):

(i) It must act as a general deterrent, in other words, it must deter other members of the community from committing such acts or thinking that the price of wrongdoing is worthwhile;

(ii) it must act as a specific deterrent, in other words, it must deter this individual from being tempted to act in such a manner ever again;

[2] 1969 (2) SA 537 (A)
[3] 2012 (1) SACR 462 (GSJ)

(iii) it must enable the possibility of correction, unless this is very clearly not likely;

(iv) it must be protective of society, in other words, society must be protected from those who do it harm;

(v) it must serve society's desire for retribution, in other words, society's outrage at serious wrongdoing must be placated.'

14. The five important functions referred to above should also be read with the following 'basic principles pertaining to sentencing' as formulated by Myburgh AJ in **S v Tsotetsi**[4]:.

'(a) The sentence must be appropriate, based on the circumstances of the case. It must not be too light or too severe.

(b) There must be an appropriate nexus between the sentence and the severity of the crime; full consideration must be given to all mitigating and aggravating factors surrounding the offender. The sentence should thus reflect the blameworthiness of the offender and be proportional. These are the first two elements of the triad enunciated in **S v Zinn**.

(c) Regard must be had to the interests of society (the third element of the **Zinn** triad). This involves a consideration of the protection society so desperately needs. The interests of society are reflected in deterrence, prevention, rehabilitation and retribution.

(d) Deterrence, the important purpose of punishment, has two components, being both the deterrence of the accused from reoffending and the deterrence of would-be offenders.

(e) Rehabilitation is a purpose of punishment only if there is the potential to achieve it.

(f) Retribution, being a society's expression of outrage at the crime, remains of importance. If the crime is viewed by society as an abhorrence, then the sentence should reflect that. Retribution is also expressed as the notion that the punishment must fit the crime.

(g) Finally, mercy is a factor. A humane and balanced approach must be followed.'

[4] 2019 (2) SACR 594 (WCC) at [29]

The offence

15. The Accused men shot at the complainant.

The offender

16. Turning to the personal circumstances of the Accused: The Accused is now 48 years old and was 45 years old at the time of the commission of the offence. He is not married but he is father to two children: daughter aged 24 years and step-daughter aged 33 years. His employment as a security guard earned him BZ 1000 per month from which he maintains his child and common-law wife.

17. Accused is a first-time offender.

The community

18. The greater the sense of unease a court feels about the imposition of a prescribed sentence, the greater its anxiety will be that it may be perpetrating an injustice. Once a court reaches the point where unease has congealed into a conviction that an injustice will be done, that can only be because it is satisfied that the circumstances of the particular case render the prescribed sentence unjust or, as some might prefer to put it, disproportionate to the crime, the criminal and the legitimate needs of society. If that is the result of a consideration of the circumstances the court is entitled to characterise them as substantial and compelling and such as to justify the imposition of a lesser sentence.

19. The court has to consider whether the personal circumstances of the Accused constitute circumstances that are substantial enough to avoid being called flippant in order to deviate from the prescribed minimum.

20. There is a chasmic crater between regret and remorse. Many accused persons might well regret their conduct, but that does not without more translate to genuine or authentic remorse. Remorse

is a gnawing pain of conscience for the plight of another. Thus, genuine or heart-felt contrition can only come from a mental assent, appreciation and acknowledgement of the extent of one's foible. Whether the offender is sincerely remorseful, and not simply feeling sorry for himself or herself at having been caught, is a factual question. It is to the enveloping actions of the accused, rather than what he says in court, that one should rather look. In order for the remorse to be a valid consideration, the penitence and contrition must be sincere and the accused must take the court fully into his or her confidence. Until and unless that happens, the genuineness of the contrition alleged to exist cannot be determined. After all, before a court can find that an accused person is genuinely remorseful, it needs to have a proper appreciation of, inter alia: what motivated the accused to commit the deed; what has since provoked his or her change of heart; and whether he or she does indeed have a wholesome appreciation of the consequences of those actions.

21. The Accused does not deny his hand in stabbing the complainant. He pleaded guilty and did not put the Crown to prove all the allegations. And, it would appear that he has a gnawing pain of conscience or at least some appreciation and acknowledgment for the extent of his foible.

22. Sentencing must serve as deterrence of others who consider embarking on a life of crime. The message that must go out to others in the community, must be that even though a perpetrator may try to evade the long arm of the law, he will be found, linked to offences and will have to stand his trial and face conviction and sentence.

23. Although the interests of society and the deterrence and sense of conveying the anger of society at the Accused must be reflected in the sentence, the offender must not be sacrificed on the altar of deterrence and punitive actions. Human beings are not goods to which a price can be attached; they are creatures with inherent and infinite worth; they ought to be treated as ends in themselves, never merely as means to an end. Where the length of a sentence, which has been imposed because of its general deterrent effect on others bears no relation to the gravity of the

offence, the offender is being used essentially as a means to another end and the offender's dignity assailed and assaulted.

24. I do not have an augmenting perturbation that imposing the prescribed minimum sentence on the Accused would be unjust, taking into account all the circumstances.

25. I consider that the aforementioned circumstances, in conjunction with each other, do justify a finding of substantial and compelling reasons, and do allow for a reduction in sentence.

26. It is a commonplace of modern sentencing doctrine that, in choosing the appropriate sentencing option in each case, the sentencing judge must always have in mind what Lawton LJ characterised, in his oft-quoted judgment in **R v Sergeant**[5], as the four "classical principles of sentencing". These are retribution, deterrence, prevention and rehabilitation. In **R v Everald Dunkley**[6], P Harrison JA explained that it will be necessary for the sentencing judge in each case to apply these principles, "or any one or a combination of ... [them], depending on the circumstances of the particular case". And ultimately, taking these well established and generally accepted principles into consideration, the objective of the sentencing judge must be, as Rowe JA (as he then was) explained in **R v Sydney Beckford and David Lewis**[7], "[to] impose a sentence to fit the offender and at the same time to fit the crime".

27. But in arriving at the appropriate sentence in each case, the sentencing judge is not at large. The view that "[u]ltimately every sentence imposed represents a sentencing judge's instinctive synthesis of all the various aspects involved in the punitive process"[8], has now given way to a recognition of the need for greater objectivity, transparency, predictability and consistency in sentencing. As one Australian commentator has observed[9] –

[5] (1975) 60 Cr App 74, 77
[6] RMCA No 55/2001, judgment delivered on 5 July 2002, page 3
[7] (1980) 17 JLR 202, 203
[8] Williscroft v R [1975] VR 292, 299-300 (Supreme Court of Victoria)
[9] Mirko Bagaric, Sentencing: From Vagueness to Arbitrariness: The need to abolish the stain that is the Instinctive Synthesis, (2015) UNSW Law Journal, Volume 38(1) 76, at page 113

"In order to have a coherent, transparent and justifiable sentencing system, the relevant principles must not only be articulated, but prioritized and weighted."

28. Having decided that a sentence of imprisonment is appropriate in a particular case, the sentencing judge's first task is, as Harrison JA explained in **R v Everald Dunkley**[10], to "make a determination, as an initial step, of the length of the sentence, as a starting point, and then go on to consider any other factors that will serve to influence the sentence, whether in mitigation or otherwise". More recently, making the same point in **R v Saw and others**[11], Lord Judge CJ observed that "the expression 'starting point' ... is nowadays used to identify a notional point within a broad range, from which the sentence should be increased or decreased to allow for aggravating or mitigating features".

29. In seeking to arrive at the appropriate starting point, it is relevant to bear in mind the well-known and generally accepted principle of sentencing that the maximum sentence of imprisonment provided by statute for a particular offence should be reserved for the worst examples of that offence likely to be encountered in practice[12]. By the same token, therefore, it will, in our view, generally be wrong in principle to use the statutory maximum as the starting point in the search for the appropriate sentence.

30. However, in arriving at the appropriate starting point in each case, the sentencing judge must take into account and seek to reflect the intrinsic seriousness of the particular offence. Although not a part of our law, the considerations mentioned in section 143(1) of the United Kingdom Criminal Justice Act 2003 are, in our view, an apt summary of the factors which will ordinarily inform the assessment of the seriousness of an offence. These are the offender's culpability in

[10] At page 4
[11] [2009] EWCA Crim 1, para. 4
[12] See, for example, the old leading case of R v Harrison (1909) 2 Cr App R 94, 96, per Channell J; and R v Byrne and others (1975) 62 Cr App R 159, 163 per Lawton LJ. See also R v Everald Dunkley, per P Harrison JA, at page 6.

committing the offence and any harm which the offence has caused, was intended to cause, or might foreseeably have caused.

31. Before leaving this aspect of the matter, I should allude in parenthesis, with admiration and commendation, to the not so recent judgment of the Court of Appeal of Trinidad and Tobago in **Aguillera and others v The State**[13]. In that case, after a full review of relevant authorities from across the Commonwealth, the court adopted what is arguably a more nuanced approach to the fixing of the starting point. Explicitly influenced by the decision of the Court of Appeal of New Zealand in **R v Tauer and others**[14], the court defined the starting point as "… the sentence which is appropriate when aggravating and mitigating factors relative to the offending are taken into account, but which excludes any aggravating and mitigating factors relative to the offender". Hence, factors such as the level of premeditation and the use of gratuitous violence, for instance, to take but a couple, would rank as aggravating factors relating to the offence and therefore impact the starting point; while subjective factors relating to the offender, such as youth and previous good character, would go to his or her degree of culpability for commission of the offence.

32. I have mentioned **Aguillera and others v The State** for the purposes of information only. But it seems to us that, naturally subject to full argument in an appropriate case, the decision might well signal a possible line of refinement and cystallisation of our own approach to the task of arriving at an appropriate starting point in this jurisdiction.

33. While we do not yet have collected in any one place a list of potentially aggravating factors, as now exists in England and Wales by virtue of Definitive Guidelines issued by the Sentencing Guidelines Council (SGC)[15], the experience of the courts over the years has produced a fairly well-known summary of what those factors might be. Though obviously varying in significance

[13] Crim. Apps. Nos. 5, 6, 7 and 8 of 2015, judgment delivered on 16 June 2016
[14] [2005] NZLR 372
[15] Established pursuant to section 170(9) of the Criminal Justice Act 2003 – see, in particular the Definitive Guideline, Overarching Principles: Seriousness.

from case to case, among them will generally be at least the following (in no special order of priority):

(i) previous convictions for the same or similar offences, particularly where a pattern of repeat offending is disclosed;

(ii) premeditation;

(iii) use of a firearm (imitation or otherwise), or other weapon;

(iv) abuse of a position of trust, particularly in relation to sexual offences involving minor victims;

(v) offence committed whilst on probation or serving a suspended sentence;

(vi) prevalence of the offence in the community; and

(vii) an intention to commit more serious harm than actually resulted from the offence. Needless to say, this is a purely indicative list, which does not in any way purport to be exhaustive of all the possibilities.

34. As regards mitigating factors, a plenitude of authors has cited with approval Professor David Thomas" comment[16] that "[m]itigating factors exist in great variety, but some are more common and more effective than others". Thus, they will include, again in no special order of priority, factors such as:

(i) the age of the offender;

(ii) the previous good character of the offender;

(iii) where appropriate, whether reparation has been made;

(iv) the pressures under which the offence was committed (such as provocation or emotional stress);

(v) any incidental losses which the offender may have suffered as a result of the conviction (such as loss of employment);

[16] David A Thomas, Principles of Sentencing, 2nd edn, page 46

(vi) the offender's capacity for reform;

(vii) time on remand/delay up to the time of sentence;

(viii) the offender's role in the commission of the offence, where more than one offender was involved;

(ix) cooperation with the police by the offender;

(x) the personal characteristics of the offender, such as physical disability or the like; and

(xi) a plea of guilty. Again, as with the aggravating factors, this is not intended to be an exhaustive list.

35. This list is now largely uncontroversial. However, in relation to time spent in custody before trial, we would add that it is now accepted that an offender should generally receive full credit, and not some lesser discretionary discount, for time spent in custody pending trial.

36. This decision was applied by the Caribbean Court of Justice in **Romeo DaCosta Hall v The Queen**[17], an appeal from the Court of Appeal of Barbados, in which Wit JCCJ, in a separate concurring judgment, remarked the emergence of "[a] worldwide view ... that time spent in pre-trial detention should, at least in principle fully count as part of the served time pursuant to the sentence of the court".

37. Additionally, as regards the plea of guilty, such a plea must, as P Harrison JA (as he then was) stated in **R v Collin Gordon**[18], "attract a specific consideration by a court". The rationale for this has been variously explained. In **Keith Smith v R**[19], for instance, a decision of the Court of Appeal of Barbados, Sir Denys Williams CJ observed that "[i]t is accepted that a plea of 'Guilty'

[17] [2011] CCJ 6 (AJ), para. [32]
[18] SCCA No 211/1999, judgment delivered on 3 November 2005, page 4.
[19] (1992) 42 WIR 33, pages 35-36. This statement was recently referred to with approval by Brooks JA in the judgment of this court in Jermaine Barnes v R [2015] JMCA Crim 3, para. [11]

may properly be treated as a mitigating factor in sentencing as an indication that the offender feels remorse for what he has done". And in **R v Collin Gordon**, P Harrison JA said this[20]:

> **"The rationale in affording to an offender the consideration of discounting the sentence because of a guilty plea on the first opportunity is based on the conduct of the offender. He has thereby frankly admitted his wrong, has not wasted the court's time, thereby saving valuable judicial time and expense, has thrown himself on the mercy of the court and may be seen as expressing some degree of remorse."**

38. The view that a plea of guilty may be treated as an expression of remorse on the part of the offender has been adopted by many courts on more than one occasion. The plea of guilty is to be characterised as an indication of repentance and a resignation to the treatment of the court. And, most recently, in other cited authorities it has been reiterated that "the authorities have observed that a plea of guilty in and of itself may very well be regarded as an indication of remorse"[21].

39. The extent of the allowable discount for a guilty plea has never been fixed. But the authorities make it clear that all will depend on the circumstances of the particular case. Therefore, in **Joel Deer v R[22]**, Phillips JA stated that "[t]he amount of credit to be given for a guilty plea is at the discretion of the judge". Phillips JA went on to refer to **R v Buffrey[23]**, in which Lord Taylor CJ stated that, as a general rule "something of the order of one-third would very often be an appropriate discount from the sentence which would otherwise be imposed on a contested trial". The editors of Archbold[24] stated that English Court of Appeal cases suggest that "it is normally between one-fifth and one-third of the sentence which would be imposed on a conviction by a

[20] At page 5
[21] At para. [32] of Kurt Taylor v. R, SCCA.
[22] [2014] JMCA Crim 33, para. [8]
[23] (1993) 14 Cr App R (S) 511, 514
[24] Archbold: Criminal Pleading, Evidence and Practice, 1992, para. 5-153

jury". Among the relevant considerations for the sentencing judge will be the strength of the case against the offender ("an offender who pleads guilty in the face of overwhelming evidence may not receive the same discount as one who has a plausible defence"), as well as the timing of the plea. As regards the latter, a plea offered on the first opportunity which presented itself to do so before the court may qualify the offender for the maximum allowable discount, while a plea offered at some later stage during the prosecution might attract some lesser discount.[25]

40. As far as I am cognizant, there is no decision of the Court of Appeal of Belize explicitly prescribing the order in which the various considerations identified in the foregoing paragraphs of this sentence judgment should be addressed by sentencing judges. However, it seems to me that the following sequence of decisions to be taken in each case, which I have adapted from the SGC's definitive guidelines[26], derives clear support from the authorities to which we have referred:

(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)

Sentence Range

41. As has been seen, the Criminal Code of Belize empowers the sentencing judge to sentence a person convicted of a breach of section 83(b) to be liable to imprisonment for 10 years. The range of options given to the sentencing judge is therefore wide, no doubt reflecting the view of Parliament that, as with any other offence, offences committed in breach of section 83(b) may vary widely in seriousness, as will the particular circumstances of each offender who is brought

[25] See R v Everald Dunkley and see also R v Hall [2007] 2 Cr App R (S) 42
[26] See Andrew Ashworth, Sentencing and Criminal Justice, 5th edn, page 32

before the court. In other words, as Hilbery J puts it in a similar context in the renowned older case **R v Ball**[27] –

> **"Our law does not ... fix the sentence for a particular crime, but fixes a maximum sentence and leaves it to the Court to decide what is, within that maximum, the appropriate sentence for each criminal in the particular circumstances of the case."**

42. What does "shall be liable" mean in law" The Court of Appeal for East Africa in the case of **Opoya -v- Uganda** (1967) EA 752 had an opportunity to clarify and explain the words "shall be liable on conviction to suffer death". The Court held that in construction of penal laws, the words "shall be liable on conviction to suffer death" provide a maximum sentence only; and the courts have discretion to impose sentences of death or of imprisonment. The Court cited with approval the dicta in **James -v-Young** 27 Ch. D. at p.655 where North J. said:

> **"But when the words are not 'shall be forfeited' but 'shall be liable to be forfeited' it seems to me that what was intended was not that there should be an absolute forfeiture, but a liability to forfeiture, which might or might not be enforced".**

43. This line of argument was further stated in the case of **NOO v REPUBLIC [2019] eKLR** where Mativo J had this to say thereon: -

> **"8. It seems to me beyond argument the words "shall be liable to" does not in their ordinary meaning require the imposition of the stated penalty but merely express the stated penalty which may be imposed at the discretion of the court. In other words they are not mandatory but provide a maximum sentence only and while the liability existed the court might not see fit to impose it. From the comments made by the Magistrate cited above, the learned Magistrate did not address himself to the question whether or not the said provision conferred discretion to him. Differently stated, his discretion in the matter before him remained un exercised. As a consequence, he imposed the maximum sentence. Alternatively, he misconstrued the**

[27] (1951) 35 Cr App R 164, 166

said provision to be mandatory and imposed a life sentence, hence, the exercise of his discretion in pronouncing the sentence was unfairly influenced by the said misdirection of the law or failure to exercise his discretion properly or both.

9. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of an appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of the crime and the manner in which the crime is done. There is no straightjacket formula for sentencing an accused on proof of crime. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep the gravity of the crime, motive for the crime, nature of the of the offence and all other attendant circumstances.[7]The principle governing imposition of punishment would depend upon the facts and circumstances of each case. An offence which affects the morale of the society should be severely dealt with.[8] Also, while exercising its discretion in sentencing, the court should bear in mind the principles of proportionality, deterrence and rehabilitation and as part of the proportionality analysis, mitigating and aggravating factors should also be considered.[9]"

44. The term shall be liable to imprisonment for life has received Judicial pronouncement in several cases where the courts have come to conclusion that it is not mandatory and that the court may give any sentence up to life imprisonment.

The Starting Point

45. The sentence range has been established by authorities from the Court of Belize to be between 5 to 10 years. The starting point in this matter will be identified as 10 years.

Aggravating factors

46. The starting point, having been identified as 10 years, the next step in the analysis would be to identify the aggravating factors, which would lead to an upward adjustment in the starting point.

47. This court sees no other aggravating factors other than the use of the guns.

Mitigating factors

48. There are two mitigating factors which have been identified; these were that the defendants' youthful ages, and the plea in mitigation done by attorney-at-law for the accused men, show good prospects for rehabilitation on the part of Messer's August and Bain. These would lead also to a downward movement of the starting point to 8 years.

Reduction for guilty plea

49. It is established by law, that a guilty plea merits a specific consideration by the court as a mitigating factor and is, therefore, a legitimate consideration for discounting or reducing a sentence that would have otherwise been imposed after a trial.

50. In this case, the appellant did plead guilty at a relatively early stage in the proceedings in the court. The prosecution had not yet set a trial date when his counsel indicated that he wished to be pleaded. The authorities are pellucid that a plea offered at an early opportunity, which presented itself, merits a higher discount than one offered at a later stage of the proceedings. The court must, however, have regard to the strength of the case against the offender. In this case, the evidence outlined by the defence and prosecution does allow for this court to assess the strength of the case against him and the availability or unavailability to him of a possible or viable defence.

51. It seems, in keeping with the dictates of the relevant authorities, that in such circumstances, a discount of one-fifth would be reasonable. That would reduce the sentence to be imposed, following the plea of guilty, to approximately 7 years.

52. I wish to make one thing pellucid. I am very well aware of the cases that point towards sentences of 8 years and higher for use of deadly means of harm with intent to cause grievous harm offences that are on the criminal end of the spectrum, regardless of mitigating factors that might

exist. But I also know that sentencing ranges are guidelines. Although an important tool, it is but one that should guide me in my task.

53. This sentence will deter and denounce. It should not be forgotten that I am not imposing a jail sentence on a mature and young first-time offenders. While not one of the longest given for this kind of case, it still is a significant reformatory sentence. Given the particular circumstances of your case, I find that the sentence will deter others. It will send a message that the use of deadly means to cause dangerous harm will not be accepted. But it will also show those who are aware of the facts of your case that those important sentencing objectives can be reached without an undue heavy hand, but rather by punishment that is measured. Not handed out blindly or excessively. Based only upon fear.

54. Sentence/Orders

1. The sentence of 7 years imprisonment is imposed on Mark August.
2. The sentence of 7 years imprisonment is imposed on Avery Bain.
3. Three years of Anger Management Counselling at the Community Rehabilitation Division is also ordered for both Mark August & Avery Bain.
4. The sentence is to be reckoned as having commenced as of today's date.

Dated the 10th day of November, 2023

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RICARDO O. SANDCROFT

Justice of the High Court