

**IN THE SENIOR COURTS OF BELIZE
CENTRAL SESSION-BELIZE DISTRICT**

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO: C 0055/2020

BETWEEN

THE KING

and

**DELSON PAGUADA
TIONNE PAGUADA**

Prisoners

Appearances:

Ms. Romey Wade, Crown Counsel for the Crown.

Mr. Leeroy Banner for the Prisoners.

2023: June 6, 7, 8, 9 and 13th
July 24th
December 20th.

JUDGMENT

MURDER- SENTENCING-MINORS DETENTION AT THE COURT'S PLEASURE

[1] **PILGRIM, J:** Delson and Tionne Paguada (“prisoner #1 and #2 respectively”) were indicted for the offence of murder, contrary to section 117 read along with section 106(1) of the **Criminal Code**¹, (hereinafter “the Code”) arising out of the shooting death of Jimell Jex (“the deceased”) on 23rd January 2018. After trial before this Court by judge alone they were convicted of murder on 24th July 2023. The Court ordered several reports on conviction to achieve a properly informed sentence as suggested by the apex court, the Caribbean Court of Justice (the “CCJ”) in **Calvin Ramcharran v DPP**². The last of these reports, the social inquiry report, was only received in December 2023.

The Legal Framework for sentencing for murder generally.

[2] The sentencing regime for murder is set out at section 106 of the Code which provides, where relevant:

“106.-(1) Subject to sub-section (2), a person who commits murder shall be liable, having regard to the circumstances of the case, to–

(a) suffer death; or

(b) imprisonment for life.

...

(3) Where a court sentences a person to imprisonment for life in accordance with sub-section (1), the court shall specify a minimum term, which the offender shall serve before he can become eligible to be released on parole in accordance with the statutory provisions for parole.

(4) In determining the appropriate minimum term under sub-section (3), the court shall have regard to–

(a) the circumstances of the offender and the offence;

(b) any aggravating or mitigating factors of the case;

(c) any period that the offender has spent on remand awaiting trial;

(d) any relevant sentencing guidelines issued by the Chief Justice; and

(e) any other factor that the court considers to be relevant.” (emphasis added)

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

² [2022] CCJ 4 (AJ) GY at para 86.

[3] The CCJ in **August et al v R**³ considered section 106 of the Code, per Byron PCCJ and Rajnauth-Lee JCCJ:

“[82] We have concluded that under the amended s 106, where a person is convicted of murder, that person can be sentenced to death or to a maximum term of imprisonment for life. Accordingly, any life sentence imposed following a conviction for the offence of murder will be discretionary and not mandatory. Wherever on the scale the term is fixed, the term of imprisonment must necessarily be such that it is befitting of the circumstances of the offence and the offender.

[83] Where a term of life imprisonment is imposed by the sentencing judge, the judicial tailoring function is preserved by sub-ss (3) and (4) which allow for the prescription of a minimum term that must be served by the offender before being eligible for release on parole. In individualizing that minimum period, the judge's exercise of his or her sentencing discretion is guided by the consideration of the key factors set out in sub-s (4).” (emphasis added).

[4] The Privy Council has opined in the Belizean case of **White v R**⁴ that the death penalty is only appropriate in cases that were “‘the worst of the worst’ or ‘the rarest of the rare’; and that there must be no reasonable prospect of reform of the offender and that the object of punishment could not be achieved by any means other than the ultimate sentence of death.” There are also procedural requirements for the imposition of the death penalty set out in **R v Reyes**⁵.

[5] The Court of Appeal has comprehensively considered sentencing for murder in Belize in **Michael Faux et al v R**⁶ and made the following findings, per Hafiz Bertram P:

“[15] ...The statistics show the sentencing trend for murder is life imprisonment with a minimum term before being eligible for release on parole. The table also shows a few instances of the imposition of a fixed term sentence. ...The Court notes that these

³ [2018] 3 LRC 552.

⁴ 77 WIR 165 at para 12-14.

⁵ [2003] 2 LRC 688.

⁶ Criminal Appeal Nos. 24-26 Of 2019.

fixed term sentences have only been imposed where there have been mitigating circumstances warranting a lesser sentence. It is at the discretion of the trial judge to determine whether to impose a sentence of life imprisonment or a fixed term sentence upon a conviction of murder.

[16] For a conviction of murder a custodial sentence is warranted as shown by the imposition of past sentences. The sentencing trend for murder since the amended section 106 and the case of August has been the imposition of a life sentence with a minimum term of 25 – 37 years after which the convicted person becomes eligible to be released on parole.

[17] Where a sentence of fixed term is imposed, the range is 25 – 35 years unless there are circumstances, when individualising a sentence, which warrants a lesser sentence.” (emphasis added).

[6] The Court considers the guidance of the CCJ in the Barbadian case of Teerath Persaud v R⁷ on the issue of 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

⁷ (2018) 93 WIR 132

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 sentence imposed. (emphasis added)

[7] The Court is also guided by the decision of the CCJ in *Ramcharran* 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 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)

Prisoner #1

Factual basis of sentence

[8] Prisoner #1 was 19 years old at the time of the offence and is liable to be sentenced as an adult as he does not fall within section 106(2) of the Code, nor does he come under the provisions of the **Juvenile Offenders Act**⁸.

[9] On 23rd January 2018 at 5:00 p.m. in San Pedrito, the deceased was killed as a result of gunshot wounds inflicted by Prisoner #2 and another person with the assistance and encouragement of Prisoner #1. Dr. Loyden Ken, a licensed pathologist, opined that the cause of death of the deceased was acute cranio encephalic traumatic injuries due to multiple perforating gunshot wounds to the head. Prisoner #1 pulled the deceased off of his bike shortly before the deceased was shot with the assistance of the first shooter. This is an act, the Court found, would have destabilised the deceased and made it easier for the first shooter to shoot the deceased and cause his death. This was an act of assistance for the purpose of the laws of joint enterprise. The Court also inferred from all the circumstances that Prisoner #1 was there to provide force of numbers in a hostile confrontation, a usual form of encouragement for the purposes of the law of joint enterprise, in this regard see the case of **R v Jogee et al**⁹, adopted in this jurisdiction by the Court of Appeal **in Eli Avilia Lopez et al v R**¹⁰.

Constructing the sentence

[10] The Court begins by considering the aggravating features of the offending. Those are, in the Court's mind, as follows:

- i. There was a substantial degree of premeditation or planning: The evidence which this Court accepted from Ms. Phillipa Pamela Zetina was that the prisoner and two other armed persons emerged together from a lagoon as the deceased was on his bicycle before dragging him off shooting and killing him. The irresistible inference therefrom was that prisoner #1 and #2 and the other man were laying in wait for the deceased to kill him;
- ii. The offence was committed with others: The Court found that this offence was committed with the assistance of two others apart from prisoner #1;
- iii. The offence involved the use of two firearms. The Court's sentence would need to demonstrate the Belizean society's abhorrence of gun related crime;

⁸ Chapter 119 of the Substantive Laws of Belize, Revised Edition 2020.

⁹ 87 WIR 439 at para 89.

¹⁰ Criminal Appeals Nos. 22-23 of 2018 at paras 38-39.

- iv. There was overkill in that the deceased was shot 5 times;
- v. The offence was committed in full view of the public: The Court found that prisoner #1 assisted in what was a public execution committed in broad daylight in a busy area, which caused trauma to passersby like Ms. Adriana Barretto who had to take tranquilizers after seeing the shooting. Mr. Deon Neal was actually shot in the melee. The Court also notes that the offence was committed while people may have been on their way home from work, as the witness Ms. Zetina was; and
- vi. This is a serious and prevalent offence. Ms. Mary Jex, the mother of the deceased, noted in her victim impact statement that the acts of prisoner #1 caused her the loss of her last child which caused her to sink into depression. She lost a breadwinner as the deceased used to look after her financially. She now has to take on the added responsibility to raise the deceased's 5 children as an elderly woman.

[11]The Court found no mitigating features of this offending.

[12]The Court cannot impose the death sentence as this case does not qualify as the “rarest of the rare” or “the worst of the worst” under the authority of *White*. The Court considers as an appropriate starting point for the sentence of prisoner #1 a fixed sentence of 30 years imprisonment. This is a heinous murder, a public execution which demonstrated complete disregard for human life, law or order. To not seriously punish this offence is to give the Court's approval to wanton lawlessness. The Court is of the view that a fixed sentence is appropriate having regard to the fact that prisoner #1 was still a teenager at the time of the offending and as the Court of Appeal held in *Faux* that is one of the situations in which a fixed term and not a life sentence is appropriate¹¹. The facts are similar to *Faux*, namely a teenager convicted of a shooting amongst a crowd and the Court of Appeal held that the appropriate fixed sentence range was between 25-35 years.

[13]Prisoner #1 was examined by Dr. Alejandro Matus Torres and found to have no history of mental illness.

[14]The aggravating factor relevant to the offender, in the Court's view, is as follows:

¹¹ Para 27.

- i. Prisoner #1 has committed several infractions against prison discipline from 2019 up to 2023, as is noted in the prison report. This includes a 2020 threat to kill another inmate and his entire family for which he was sanctioned. This may be a signal that he may not be serious about rehabilitating.

[15] This would cause the Court to uplift the minimum term by 2 years to 32 years imprisonment.

[16] The mitigating factors relevant to the offender are as follows:

- i. Good character- Prisoner #1 has no previous criminal convictions and that must be taken into account in his favour;
- ii. A positive social inquiry report and completion of rehabilitation programs: The report in relation to prisoner #1 shows that he is a hardworking fisherman who is always family oriented and has a good family structure that could assist his rehabilitation. Prisoner #1 has completed 1 rehabilitation course whilst in prison; and
- iii. His youth.

[17] This personal mitigation would lead the Court to reduce the sentence by 5 years to lead to a final sentence of 27 years imprisonment.

[18] Prisoner #1 has spent 3 years and 5 months on remand for this offence, rounded up, and the Court deducts that from the sentence.

DISPOSITION

[19] The Court's final sentence is 23 years and 7 months imprisonment with effect from 24th July 2023.

Prisoner #2

Legal framework for the sentencing of minors for murder.

[20] Prisoner # 2 was 15 years old at the time of this offending. Section 106 of the Code provides, where relevant:

“106 (2) A person who commits murder who was, at the time of the commission of the offence, under the age of eighteen years, shall be sentenced to detention at the court’s pleasure.

...

(6) Where a person has been sentenced to detention at the court’s pleasure in accordance with sub-section (2), the court, after having passed the sentence, shall specify a period, at the expiration of which, the offender shall be eligible to be taken before the court for a review of his detention.” (emphasis added)

[21] The Court, in interpreting these provisions, has received great assistance from the Trinidadian Court of Appeal decision of **Chuck Attin v The State**¹², in which that court considered similar legislative provisions¹³. That court, after extensively considering Commonwealth jurisprudence, issued the following guidelines which it is submitted can be appropriately adapted for Belize, per Sharma CJ:

“[31]...1. Where a person, under the age of 18 at the date of the offence, has been subsequently convicted for murder, he/she shall be sentenced to detention ‘during the court’s pleasure’.

2. At the time of the imposition of such a sentence, the trial judge must state in open court what he/she considers to be the appropriate minimum sentence (the tariff) to be served.

...

3. The trial judge must state in open court his/her reasons for making the order.

...

6. Sentences to be served ‘during the court’s pleasure’ must be reviewed by a judge of the High Court at 3-yearly intervals, or at shorter intervals if exceptional circumstances arise. An oral hearing will not normally be required unless the Chief Justice thinks that this is necessary. The decision ought, however, to be announced in open court.

...

¹² (2005) 67 WIR 276.

¹³ Para 3: “Sentence of death shall not be pronounced on or recorded against a person convicted of an offence if it appears to the court that at the time when the offence was committed he was under the age of eighteen years; but in lieu thereof the court shall sentence him to be detained during the State’s pleasure, and, if so sentenced, he shall be liable to be detained in such place and under such conditions as the Minister may direct, and whilst so detained shall be deemed to be in legal custody.”

all relevant reports are to be transmitted to the Registrar of the Supreme Court for the purpose of review every 3 years; the registrar must forward the reports to the Chief Justice who will fix the matter for review before a judge, or delegate the task of fixing the matter for review, to another judge.

We recognise, however, that in the exceptional case, a review may be required at shorter intervals. An oral hearing will not normally be required, unless the Chief Justice thinks that is necessary...

[32] Quite apart from the relevant international conventions to which the State may be a party, there can be no doubt that penal sanctions imposed on children or young offenders who are detained at the court's pleasure cannot be harsher than those imposed on adults who are serving life sentences.

...

[33] Recent authorities have consistently emphasised the concept of continuing review of the progress made by young offenders."

[22]The Court in this regard notes the local Supreme Court decision of Conteh CJ in **Bowen et al v AG**¹⁴ in terms of the careful treatment of minors in light of Belize's treaty obligations under the **United Nations Convention on the Rights of the Child**.

[23]The Court, following the guidance in *Attin*, will begin the construction of the sentence by determining the minimum sentence of imprisonment for prisoner #2.

Construction of the sentence.

[24]The factual basis for sentence is that prisoner #2 was a joint principal with another man who emerged from the lagoon with prisoner #1 and shot the deceased in his head and killed him.

[25]The Court finds that aggravating factors of the offending would be the same as for prisoner #1. There are also no mitigating factors of the offending, in the Court's view. In that regard the Court would begin with the same starting point of 30 years imprisonment.

¹⁴ Claim No. 214 of 2007.

[26]The Court found that the aggravating factor relevant to the offender are his previous conviction for threatening words and two breaches of prison discipline, which would cause the Court to uplift the sentence by 1 year. This would leave a sentence of 31 years imprisonment.

[27]The Court found the following mitigating factors relevant to the offender:

- i. His mental condition: Dr. Matus Torres did a psychiatric evaluation and found that though prisoner #2 was fit for trial and understood the proceedings, he suffers from a delusional disorder;
- ii. His efforts at rehabilitation: Prisoner #2 has completed 5 rehabilitative programs, and this is quite commendable, and would be reflected in the deduction from his sentence;
- iii. His youth; and
- iv. His positive social inquiry report: The Court forms the view from the report that prisoner #2 is ambitious, hardworking and from a good family structure with a very loving mother. It appears that the death of his father had a considerable negative impact on his life.

[28]This would cause the Court to reduce the sentence by 7 years leaving a sentence of 24 years imprisonment.

[29]Prisoner #2 has also spent 2 years and 3 months, rounded up, on remand and the Court would deduct that from the sentence. This would leave a minimum term of imprisonment of 21 years and 9 months.

DISPOSITION

[30]The Court's sentence would then be that prisoner #2 is to be detained at the court's pleasure. The Court orders that prisoner # 2 serve a minimum term of 21 years and 9 months imprisonment with effect from 24th July 2023. Prisoner #2 is to have 3-year periodic reviews of his detention by a judge of the High Court from the date of sentence. The Registrar of the Senior Courts of Belize should be provided with relevant prison reports, social enquiry reports and psychological reports to facilitate those 3-year periodic reviews of prisoner #2's detention. These reports are then to be forwarded to the Honourable Chief Justice for assignment to an appropriate judge for review following the guidance in *Attin*.

Nigel Pilgrim

High Court Judge

Dated 20th December 2023