IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO: C 0033/2022

BETWEEN

THE KING

and

IGNATIUS WILLIAMS

Defendant

Appearances:

Mrs. Portia Staine Ferguson, Senior Crown Counsel for the King

Mr. Arthur Saldivar for the Defendant

2023: December 11

2024: January 17

IGNATIUS WILLIAMS JUDGMENT ON SENTENCING- RAPE

Background

[1] **Nanton, J:** The Crown has indicted the accused for one count of aggravated burglary contrary to **Section 149 (1) of the Criminal Code**[1] and one Count of Rape contrary to **Section 46 of the Criminal Code** for offences arising out of one incident which is alleged to have occurred on 17th August 2019.

[2] The particulars being that the accused, while armed with weapons, entered the dwelling house of the complainant as a trespasser with intent to steal and during the commission of that offence he raped the complainant.

[3] The matter was set for trial to commence on 11th December, 2023.

[4] On 11th December, 2023 Defence Counsel on behalf of the Prisoner signalled an intention to plead guilty. The Crown and Defence engaged in discussions with the result that the Crown withdrew the burglary count.

[5] The Prisoner was re-arraigned before this Court on the second count only and pleaded guilty to the offence of Rape contrary to **section 46 of the Criminal Code.**

[6] The Court ordered that psychiatric, social enquiry and prison reports be prepared in relation to the Prisoner and the matter was adjourned for the purpose of obtaining said reports.

[7] The Crown has filed its Victim Impact Report and also submitted to the Court- the clinical report of the Victim that was prepared by Counsellor Jeniffer R Lovell.

[8] The Crown has filed the agreed facts which have been accepted by the Defence.

[9] The Parties were given an opportunity to be heard. The Crown provided the Court with sentencing precedents on the offence of Rape and Counsel for the Prisoner gave his plea in mitigation orally and the Prisoner himself was given an opportunity to speak on his own behalf. The Court expresses its gratitude to the Parties for their dedicated efforts in having this matter resolved in an efficient and timely manner.

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

The Law

[10] The penalty for the offence of Rape is contained in **Section 46 of the Criminal Code**:

> *"Every person who commits rape or marital rape shall on conviction on indictment be imprisoned for a term which shall not be less than eight years but which may extend to imprisonment for life."*

[11] Section 46 above must be read in conjunction with **Section 160 (1) of the Indictable Procedure Act**[2] (the IPA) which provides:

> *"(1) Where any person is convicted of a crime punishable by a mandatory minimum term of imprisonment under the Code or any other enactment, the court may, if it considers that the justice of the case so requires, having regard to special reasons which must be recorded in writing, exercise its discretion to sentence the person to a term of imprisonment, as the case may be, less than the mandatory minimum term prescribed for the crime for the Code or other enactment, as the case may be.*
>
> *(2) Notwithstanding the provisions of this section, the court may not sentence an offender who is eighteen years of age or over, to less than the prescribed mandatory minimum term, where the crime he has been convicted of is–*
>
> *…*
>
> *(b) an offence under section 46 (rape), 47(1) (unlawful sexual intercourse with person under the age of fourteen years), 47A (rape of a child) or 62 (incest) of the Code."*

[12] The Court has considered the constitutionality of the mandatory minimum sentence set out above and whether the Court is bound by said statutory minimum when

[2]Chapter 96 of the Substantive Laws of Belize, Revised Edition 2020

viewed against Section 7 of the Constitution which provides that *"no person shall be subjected to torture or to inhuman or degrading punishment or other treatment"*

[13] The decision of our Court of Appeal in **R v Zita Shol**[3] is instructive, per Bulkan JA:

> *"Mandatory sentences have always created some tension and are justifiably viewed with caution. Sentencing is a quintessential judicial function, so the tension results from the fact that a fixed penalty forecloses judicial discretion. Nonetheless, it is conceded that every branch of government has a role to play in the criminal justice process, including that of punishments: the executive sets policy, the legislature implements that policy by enacting crimes with attendant penalties, and the judiciary administers justice in individual cases, including through the sentencing of offenders. Where a particular activity becomes a persistent or grave societal problem, as in the case of drug trafficking or gang activity, policy-makers and legislatures have resorted to mandatory penalties as one means of ensuring consistency in judicial approaches and ultimately eradicating the problem. For this reason, mandatory sentences have traditionally not been regarded as a usurpation of the judicial function or contrary to the principle of separation of powers, including by this Court. … [14]… In Aubeeluck v the State [2011] 1 LRC 627, another decision of the Privy Council on appeal from Mauritius, the issue for determination concerned the constitutionality of a mandatory minimum sentence for trafficking in narcotics. The Board noted that the effect of the constitutional prohibition on inhuman and degrading punishments (also contained in s. 7 of the Mauritius Constitution) is to outlaw "wholly disproportionate penalties". The Board then held that when confronted with a mandatory minimum sentence fixed by statute, there are three courses open to a court to ensure there is no violation of the constitutional protection – to invalidate the law providing for the mandatory sentence; to read it down and confine*

[3] Criminal Application No. 2 of 2018

the mandatory penalty to a particular class of case only; or simply to quash the sentence in the case under consideration if to impose the full mandatory period of imprisonment would be disproportionate in those specific circumstances. In this case, the Board rejected the more expansive routes and opted for the third one. In striking down the sentence of 3 years' imprisonment that had been imposed on the appellant for trafficking in narcotics, their Lordships factored in that he was dealing with only a small quantity just barely over the limit that raises the presumption of trafficking and that he hitherto had a clean record. The significance of this approach is that it attempts to accommodate the legislative intention as far as possible, in that mandatory sentences are not automatically invalidated in all cases. Not only is there the possibility of reading them down, but also a court can depart from them on an individual basis where the circumstances demand."

[14] The Court reasons that it is clearly entitled to follow the **Aubeeluck**[4] approach of departing from the mandatory sentence in specific cases where to abide by the mandatory minimum will result in a disproportionate sentence. This approach has similarly been adopted by in **Bowen v Ferguson**.[5]

[15] The Court interprets the guidance in **Shol** to be that though the Court is to have considerable regard to the intention of the National Assembly in creating a mandatory minimum sentence; however, if on the facts of the particular case the Court finds that the mandatory minimum is so disproportionate as to be inhuman and degrading punishment then the Court is obliged to depart from it in protection of the Prisoner's rights pursuant to section 7 of the Constitution.

[4] [2011] 1 LRC 627
[5] Cr App 6/2015, decision dated 24 March 2017

[16] For the reasons that will be advanced below, this Court considers that the particular facts of this case does not warrant a departure from the mandatory minimum imposed by the National Assembly under section 46 of the Criminal Code.

[17] Additionally, this Court has considered the propriety or otherwise of a custodial sentence having regard to the provisions of the **Penal System Reform (Alternative Sentences) Act**,(the "PSRAA") which states:

> *"28.-(2) …the court shall not pass a custodial sentence on the offender unless it is of the opinion,*
>
> *(a) where the offence is a violent or sexual offence (as defined in section 7 of this Act), that only such a sentence would be adequate to protect the public from serious harm from the offender."*

[18] The Court has taken into account the prevalence, gravity and seriousness of this offence, the violence inflicted on the Victim and the need to punish the offender as well as to protect the society from serious harm by the offender. For these reasons the Court considers that the imposition of a custodial sentence is appropriate.

[19] 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**[6] on the issue or the formulation of a just sentence, as highlighted by 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*

[6] (2018) 93 WIR 132

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."

[20] The Court is also guided by the decision of the CCJ in **Calvin Ramcharran v DPP**[7] 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

[7] [2022] CCJ 4 (AJ) GY

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)."

The Facts

[21] The Court relies on the agreed facts signed off by both parties which was read into the record. In summary, the Victim was awoken by the sounds of dogs. She went to check on the dogs and saw the Prisoner inside of her home armed with two knives. He threatened to stab her. The Victim was in fear for her life and cooperated with the Prisoner. The Prisoner took the Victim into her sister's bedroom. The Victim cried and begged for her life while the Prisoner demanded that the Victim take off her clothes or that he would stab her. He told her to lay on the bed and she complied. The Victim tried her best to keep her legs closed but the Prisoner hit her hard on her leg making it difficult for her to resist. He forced her legs open and forced his erect penis into her vagina. The Victim was still struggling but the Prisoner was stronger than her so he had his way. The Prisoner had placed a black handled knife next to them on the bed which was present throughout the whole ordeal. The Victim reported the crime to her neighbour and then to the police.

Analysis

[22] 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, Sexual Offences**[8] ("the ECSG"). This Court notes that guidelines are not a straight-jacket and that judicial discretion must remain at the heart of the sentencing process.[9]

[8] Re-Issue, 12th April 2021

[9] Burton and Anor v R 84 WIR 84 at para. 13

[23] In arriving at an appropriate starting point the Court used the ECSG as a guide. The Court in considering the consequences of harm places this offence under category 2 i.e. an offence with high consequence. For this assessment the Court considered the following factors: there was degradation/humiliation on the Victim as the sexual assault was committed in the presence of another. There was the threat of force as well as use of actual force in the commission of the act. The Court notes the grave psychological harm to the Victim- reference is here made to the Victim Impact Statement provided as well as the clinical report of Jennifer R Lovell who provided counselling services to the Victim and whose diagnostic summary of her assessment of the Victim immediately after the offence was that of a person suffering from Post-Traumatic Stress Disorder. The Victim detailed the lasting psychological effects that she still endures several years since the incident. She suffers from anxiety, and crippling fear which she says affects her daily existence. She had suicidal thoughts, altered sleeping patterns, depression, and had to be placed on anti-retroviral medication for her exposure to HIV which caused her to rapidly lose weight. Her professional and personal relationships suffered dearly as she has felt compelled to withdraw from the public light and isolated herself.

[24] The Court places the level of seriousness under Level A as contemplated by the ECSG based on the fact that the Prisoner used several threats of violence and actual violence to force the Victim to comply as well as to prevent the victim from reporting and he also forced entry into the Victim's home.

[25] The Court assesses that the starting point should be assessed within the 35-65% range as suggested by the ECSG.

[26] In determining the appropriate starting point the Court considers the following general aggravating factors of the offending:

i. The offence is serious and prevalent. Sexual offences are far too prevalent in Belize society and the Court's sentence must reflect the significance of that factor.

ii. This was a brazen attack which happened in broad daylight.

iii. Forced entry into the Victim's home.

iv. The offence was facilitated by threat of the use of a weapon.

v. The Virtual Complainant suffered severe emotional distress.

vi. The sexual assault was committed in the view of the accomplice of the Prisoner.

[27] The Court does not find any mitigating factor relative to the offence.

[28] In determining the exact figure for the starting point the Court has also reviewed the local sentencing authorities submitted by the Crown for the offence of Rape bearing in mind that those authorities reflect final sentences and not starting points and in some cases they also pre-date the amendments to the Criminal Code establishing mandatory minimum sentences. Notwithstanding, the Court did give the cases due consideration. The appropriate starting point based on the considerations outlined above is **15 years** which is the equivalent of 50% of the maximum sentence.

[29] The Court will next consider the factors relative to the offender. The Prisoner Ignatius Williams is a 30 year old male who has a common law wife and a 6 year old son who suffers from leukaemia. The Prisoner, while being interviewed accepted accountability for his actions and made expressions of genuine remorse which is also evident by his guilty plea. The Prisoner also echoed these sentiments in his oral address to the Court. He explains that at the time of the commission of this offence he was under the influence and expresses that he is no longer the same person who committed this crime. During his time at Prison, he has made efforts toward rehabilitation by enrolling in Prison Programmes. The Court accepts the Prisoner's acceptance of guilt and his recognition of the wrong he has done. The Prisoner is not beyond rehabilitation and it is hoped that he will make concerted

efforts to rehabilitate as he serve his sentence so that upon his release he can become a productive member of this society and a good father to his son.

Aggravating factors

i. The Prisoner has a conviction for dangerous harm in October 2019 and March 2023 convictions for keeping a firearm and ammunition without a license.
ii. Prisoner also has infractions against the Prison Rules- the infractions listed at 1-4 have not been taken into consideration as they are of a relatively minor nature.

Mitigating factors

i. Expression of genuine remorse.
ii. Enrolment in Prison programmes.

[30] For the aggravating factors of the offender particularly his previous convictions which are quite recent, the Court will make an upward adjustment to the starting point of 2 years but will award a 3 year downward adjustment for the Prisoner's mitigating factors including his expression of genuine remorse and his efforts at rehabilitation. This results in one year downward adjustment bringing the starting point down to **14 years or 168 months.**

[31] By the Prisoner's guilty plea the Victim has been spared the ordeal of having to testify in Court and he has saved precious judicial time and resources. In line with the authorities, the Court will award full credit to the Prisoner for his guilty plea which results in a reduction of one third (56 months) from the starting point of 14 years/ 168 months. This results in a net figure of **112 months**.

[32] In **Romeo da Costa Hall v The Queen**[10] the CCJ highlighted the importance of awarding full credit for the time spent in pre-trial custody.

[33] However, the Court is also mindful of the provisions of **Section 161 of the Indictable Procedure Act**:

> *"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."*

[34] The Court is also guided by the interpretation of that section by our Court of Appeal in **Winston Dennison v R**[11]**,** 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. In this regard the Court relies on the decision of the CCJ in **Bridgelall v Hariprashad**[12] where they opined, per Saunders JCCJ, as he then was: *"consecutive sentences may be given where the offences arise out of unrelated facts or incidents."*

[35] The Prisoner has spent 1 year and 13 days in pre-trial custody- the Court has calculated this figure from the date that the Prisoner was received into custody for this offence (August 20th 2019 to present) but excludes the portion of that time spent serving sentences for unrelated convictions (Oct 21st 2019-September 30 2021 and March 4th 2020- March 4th 2023). This figure, rounded up to **1 year and 1 month or 13 months** is deducted from his sentence leaving a final sentence of **99 months** remaining to be served from the date of this judgment.

[10] [2011] CCJ 6 (AJ)
[11] Cr App 1 of 2013
[12] (2017) 90 WIR 300

DISPOSITION

The Prisoner is sentenced to **99 months** to run from the date of this decision**.**

Candace Nanton

High Court Judge
Senior Courts Belize
Dated 17th January 2024