

IN THE SENIOR COURTS OF BELIZE

NORTHERN DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO.: N8/2022

BETWEEN

THE KING

and

SANTIAGO VICTORIN

Defendant

Before:

The Honourable Mr. Justice Raphael Morgan

Appearances:

Mrs. Shanidi Urbina, Dovini Chell and Lavinia Cuello for the Crown

Mr. Leslie Hamilton for the Defendant.

2024: March 18th

SENTENCING - CAUSING DEATH BY CARELESS CONDUCT

[1] **MORGAN, J.:** Santiago Victorin (“the Defendant”) was indicted on one count of Causing Death by Careless Conduct, contrary to section 108 of the **Criminal Code**¹, (“the Code”).

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

[2] By application dated 13th March 2024 the Defendant sought a sentence indication from the Court pursuant to the Practice Direction 298 of 2022 entitled “**Sentence Indications (Re-Issue)**” (“the Practice Direction”) issued by then Ag. Honourable Chief Justice Arana.

[3] On the 14th March 2024 the Defendant received and accepted the following sentence indication:

- a) The Court will not impose a custodial sentence on the applicant
- b) The Court will not disqualify the applicant from holding a drivers licence
- c) The maximum fine that the Court will impose is a fine of \$4000.00 in default 1 year imprisonment.

[4] The Court then proceeded to sentence the Defendant after mitigation on the 18th March, 2024 and has now reduced its oral reasons into writing.

The timing of the application for the sentence indication

[5] The Court recognizes that applications for a sentence indication serve an extremely useful purpose in the modern criminal justice system. As was recognised by Lord Woolf CJ in the seminal case of **R v Goodyear**² the availability of sentence indication applications can lead to “*an increased number of early guilty pleas, which a consequent reduction in the number of trials, and the number of cases which are listed for trial, and then, to use current language, ‘crack’ at the last minute, usually at considerable inconvenience to those involved in the intended trial, and in particular, victims and witnesses*”³.

[6] The Practice Direction therefore allows for the making of an application for a sentence indication at any time prior to the commencement of a trial or the hearing of an indictment⁴ and even at any time before a verdict has been entered⁵. Of note is that in the instant matter, at the time notice was given to the Court of the intention of the Defendant to seek a sentence indication, **juror summons had already been**

² [2005] 3 ALL ER 117

³ Para 53 R v Goodyear ibid

⁴ Rule 1.1.1 Practice Direction 298 of 2022

⁵ Rule 1.1.2. Practice Direction 298 of 2022

issued and served, trial dates reserved and blocked and Crown witnesses had also been contacted.

[7] The opportunity to make an application for a sentence indication is made known to each and every person indicted on a criminal charge at their first hearing before the High Court pursuant to the **Criminal Procedure Rules 2016** (CPR)⁶.

[8] The overriding objective of the **CPR** is that “criminal cases be dealt with justly and expeditiously”⁷. It is the duty of all parties including the Court to further the overriding objective which includes dealing with cases efficiently and expeditiously⁸ and with due regard to the needs of other cases⁹. The **CPR** therefore represents a commitment not just by the Court but also the Crown and the Defence to rigorously engage in case management with a view towards the efficient resolution of all matters before the court. This rigorous case management helps to achieve the best use of resources by all parties.

[9] This commitment has achieved greater significance with the advent of the CCJ Academy for Law **Needham’s Point Declaration (2023) on Criminal Justice Reform: Achieving a Modern Day Criminal Justice System**. This declaration espouses aspirational guidelines or signposts by which our respective Caribbean Criminal Justice sectors can achieve the reform that is so badly needed to correct some of the issues that fall to be dealt with. One of these aspirational goals is the use of robust case-management by Courts and other participants in the criminal justice system to reduce backlogs.

[10] In that regard, the Court must emphasize that it does not discourage the making of an application of this type at any stage as envisioned by the Practice Direction. However it is hoped going forward that applications such as these are made at the earliest possible opportunity rather than after a firm trial date has been fixed and the machinery of the Courts has started rolling to ensure the efficient progress of a trial.

⁶ Rule 9.9. (ii) (d) CPR

⁷ Rule 1.3 CPR

⁸ Rule 1.4(iv) CPR

⁹ Rule 1.4(vi)(d)

[11] It is not without significance that the Court retains an unfettered discretion pursuant to the Practice Direction to refuse to give a sentence indication¹⁰. While this discretion must be exercised judicially, the later an application is made, the more cogent (but certainly not determinative) a factor this will be in favour of the exercise of the court's discretion to not entertain such an application.

[12] Further, in accordance with the guidance from our apex Court, the Caribbean Court of Justice ("CCJ") in **Teerath Persaud**¹¹ a plea of guilty ought to be awarded a 1/3 discount if made at the **earliest available opportunity with a sliding scale for later pleas to at least 10 percent**. Simply put, in the context of a sentence indication application, the later an application is made the later any potential plea may be taken. Any subsequent plea therefore **may** not be considered "made at the earliest available opportunity" and accordingly **may** not be afforded the full discount.

[13] The Court in all the circumstances of this case exercised its discretion in favour of granting the indication. However, Attorneys at Law should always be alive to the implications that may arise if an application is made at what may be considered the eleventh hour.

Legal Framework

[14] The ideological aims/principles of sentencing were identified by the CCJ in **Lashley v Singh**¹². These were set out as follows:

- a) The public interest, in not only punishing, but also in preventing crime ("as first and foremost" and as overarching),
- b) The retributive or denunciatory (punitive)
- c) The deterrent, in relation to both potential offenders and the particular offender being sentenced
- d) The preventative, aimed at the particular offender
- e) The rehabilitative, aimed at rehabilitation of the particular offender with a view to re-integration as a law-abiding member of society

¹⁰ Rule 3.9 Practice Direction 298 of 2022

¹¹ [2018] 93 WIR 132

¹² [2014] CCJ 11 (AJ) GY

[15] These principles were restated and emphasised by Jamadar JCCJ in **Pompey v The DPP**¹³. The import or significance of each principle may differ from case to case as a Court engages in the individualised process of sentencing the particular offender¹⁴.

[16] The offence of Causing Death by Careless Conduct is contained in **section 108(2) of the Code** and prescribes a maximum sentence of 2 years. The maximum sentence of 2 years being reserved for cases that fall within the worst examples of careless conduct¹⁵.

[17] In determining whether or not to impose a custodial sentence in a matter where there is no fixed minimum custodial term, a Court must have regard to the provisions of the **Penal System Reform (Alternative Sentences) Act**¹⁶ (PSRASA) (where relevant):

*“28.-(1) This section applies where a person is convicted of an offence punishable with a custodial sentence **other than one fixed by law.***

*(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, except where the penalty is death.

2. The gravity of a punishment must be commensurate with the gravity of the offence...

*4. **Where a fine is imposed, the court in fixing the amount of the fine must take into account, among other relevant considerations, the means of the offender so far as these are known to the court, regardless whether this will increase or reduce the amount of the fine..**” (emphasis added)*

[18] A court in determining the appropriate sentence in a particular matter must first ascertain what the starting point should be. This has been the subject of guidance by the CCJ in the Barbadian case of **Teerath Persaud v R**¹⁷, per Anderson JCCJ:

¹³ [2020] CCJ 7 (AJ) GY

¹⁴ Alleyne v The Queen [2017] CCJ (AJ) GY

¹⁵ Michael Espat v The Queen Criminal Appeal no. 8 of 1993

¹⁶ Chapter 102:01 of the Substantive Laws of Belize, Revised Edition 2020, see section 25.

¹⁷ [2018] 93 WIR 132

“[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)

[19] The Court is also reminded of the guidance given by Barrow JCCJ in **Calvin Ramcharran v DPP**¹⁸ on this issue:

“[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.....”

[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)

[20] A Court must also be careful not to equate the sentence indication with the starting point. The sentence indication represents the worst sentence that the Court will impose on the applicant, based on the facts available to the Court at the time of the application for a sentence indication. Further, it also importantly represents a commitment that the final sentence would not be exceeding the indication. The starting point however is determined after the Court has had the benefit of the fullness of a sentence hearing with

¹⁸ [2022] CCJ 4 (AJ) GY

the attendant submissions by the Crown and the Defence. In that regard the Court derives assistance from the helpful judgement of Lucky JA in **Orlando Alexis v The State**¹⁹ where the Trinidadian Court of Appeal considered what the proper approach and process should be for a sentence indication (called maximum sentence indications or MSIs in that jurisdiction):

“50. ... it should be appreciated that the MSI hearing and the sentencing process are distinct. For a MSI hearing to commence, the accused must make the request for the advance sentence indication. What the accused is therefore basically asking the Court to do, is to indicate the most severe sentence that will be imposed on them based on the material before the Court, should they plead guilty at that time.

The material at that point must comprise the agreed facts and any criminal record. The judge of course may request a victim impact statement or a pre-sentence report. Whatever documents the judge requests before giving the MSI is meant to assist the Court with the determination of the ‘worst’ or the highest sentence or type of sentence that will be imposed should the accused plead guilty.

51. It could not have been contemplated that the indication of the MSI was part of the actual sentencing process because such a conflation would mean that the judge would have to give a detailed account of all that has been considered such as the identification of all the aggravating and mitigating factors, and then be bound by such specificity. Further, the judge would then have to use the MSI once accepted by the accused as the starting point to continue the sentencing process and this would lead to unfairness to the prosecution and the process of sentencing itself.

52. The MSI hearing is not meant to be a ‘mock’ for the sentencing process. It is supposed to provide the accused with an indication of the most severe sentence that will be imposed on him should he plead guilty. The process for sentencing the accused is a completely new hearing during which comprehensive submissions, including the plea in mitigation, can be made by Counsel for the accused and Counsel for the prosecution should the latter deem it necessary or is called upon by the judge to assist the Court.

...

54. Put simply, the MSI is a commitment by the Court that should the accused plead guilty, the final sentence imposed will not exceed the indication. On the other hand, the sentencing process involves a transparent and logical methodology which incorporates the principles of sentencing and restorative justice.

55. Based on all that has already been discussed in this decision, it must be made clear that the MSI is not to be used as the ‘starting point’ in the sentencing process. To do so would be to treat the MSI as though it was the equivalent of a maximum penalty in statute or common law. The MSI represents the highest sentence that can be imposed by the Court after the process for final sentencing is complete....”*[emphasis mine].*

¹⁹ Cr. App. No. P033 of 2019

[21] In ascertaining the usual sentencing range for the offence of Causing Death by Careless Conduct, considerable assistance has been derived from a trio of authorities of our local Court of Appeal namely **Cardinal Smith v The Queen**²⁰, **DPP v Gonzalez**²¹, **Victor Cuevas v The Queen**²².

[22] In **Smith** a group of five persons were riding from Camalote, Cayo District to Belmopan. They began their journey around 6:45 pm that evening. Along the way when they entered a dark stretch of road. The Appellant's vehicle was then seen swerving from side to side at the back of the group. Whilst the Appellant's vehicle was passing the group a bang was heard and the body of the deceased was seen to the side. The Appellant brought his vehicle to a stop shortly thereafter but then continued on his way. Sometime after when the police were investigating the scene of the accident, the Appellant returned in another vehicle driven by another person and indicated that he had knocked down the deceased. Blood and urine samples were taken from the Appellant that evening and tested sometime thereafter. After testing the samples the Appellant was found to have a blood and urine alcohol level above the legal limit. The Appellant was found guilty at trial of Manslaughter by Negligence and fined \$6000.00 and ordered to pay compensation in the amount of \$5000.00 to the deceased's family. On Appeal the Court of Appeal substituted the Appellant's conviction for Manslaughter by Negligence for a conviction of Causing Death by Careless Conduct and the Appellant was fined \$10,000.00 in default 12 months imprisonment and in two years to pay \$10,000.00 in compensation to the deceased's family.

[23] The Court of Appeal found that notwithstanding the fact that Causing Death by Careless Conduct is the lesser offence contained in section 108 it '**remains a very serious offence**'²³. The Court further found as aggravating factors the alcohol limit of the Appellant in excess of the legal limit and the Appellant's initial response of not stopping at the scene despite being a member of the Belizean Police Force. This was mitigated by his return thereafter and co-operation with the investigation and his previous good character. Despite the offence being a very serious offence the Court of Appeal thought it best to impose a fine in the circumstances.

²⁰ Criminal appeal no. 35 of 2005

²¹ Cr. Application for Leave to Appeal no. 2 of 2015

²² Cr. Application for Leave to Appeal no. 17 of 2007

²³ Cardinal Smith v The Queen *ibid* para 67

[24] In **Gonzalez**, the DPP had appealed a sentence that was felt to be unduly lenient where the Respondent was initially fined in the amount of \$4000.00 each for two counts of Causing Death by Careless Conduct and ordered to pay \$1000.00 compensation to the family of one of the deceased persons. The Respondent was driving his vehicle on the northern highway when he struck a bicycle being driven by one of the deceased persons and on which the other deceased person was a passenger. They were both catapulted and died instantly. The Respondent stopped and rendered assistance at the scene. The Court considered as an aggravating feature that multiple persons died as a result of the accident but considered as a mitigating factor the fact that the Appellant stopped and rendered assistance. The Court of Appeal considered the offence as a very serious offence but held that the dual fines was in contravention of the **Indictable Procedure Act**²⁴. The Court instead substituted a global fine in the amount of \$8000.00 with compensation in the amount of \$10,000.00 to the family of the deceased person who was a passenger.

[25] In **Cuevas** the Appellant was involved in a three car accident where the vehicle he tried on three different occasions in quick succession to overtake a slow moving vehicle on a busy highway. The Court found that he was tailgating the vehicle ahead of him and engaged in conduct which showed a disregard for the safety of the other users of the highway. The Court of Appeal upheld the sentence of the trial judge of one year imprisonment and to pay compensation of \$10,000.00 within three years to the family of the deceased.

[26] The Court also finds the judgement of Lamb J in **King v Earl Armstrong**²⁵ to be of great assistance. Lamb J, after referencing the authorities of **Smith**, **Gonzalez** and **Cuevas** amongst others, outlined the current judicial approach to sentencing on charges of Causing Death by Careless Conduct and the sentencing options exercised by the Court. The options outlined were as follows²⁶:

“a) *A maximum term of imprisonment of two years* - although the courts have on occasion awarded a custodial sentence, more usually, any such sentence is awarded in default of

²⁴ Chapter 96 of the Substantive Laws of Belize, revised edition 2020

²⁵ Indictment N9 of 2022

²⁶ Paragraph 5 Earl Armstrong

payment. Terms of imprisonment in default of payment have ranged from between three months to two years duration, depending on the circumstances of the case;

b) *A fine*. Depending on the circumstances, decided cases have imposed fines in the range of \$2,000.00 to \$9,000.00, with the quantum typically being in the range of \$2,500 and \$4,500.00 in incidents involving a single death;

c) *Compensation to the deceased's family*. Compensation under Section 108(2) of the Criminal Code does not seek to place a monetary value on human life. Instead, the quantum of compensation, when awarded at all under this provision, reflects considerations such as any payments previously made by the Accused to the deceased's family, prior or anticipated future insurance payments to the deceased's family, pending civil claims, and the financial means of the Accused. The Court of Appeal has, however, intervened in a case awarding compensation of \$1,000.00, considering this sentence to be unduly lenient. Compensation payments awarded to date has ranged from zero to \$10,000.00, with a range of \$3,500.00 to \$5,000.00 being the norm; and

d) *Disqualification from driving*. Despite the view expressed at paragraph 68 of *Cardinal Smith v. The Queen* that "where persons are convicted of an offence under this section, [...] [their driving] licence [...] should invariably be suspended", other cases have criticized this approach as indefensibly rigid and inflexible and have refrained from ordering the suspension of the Accused's licence"

Agreed Facts

[27] On the 3rd of September 2020 at about 4:30 p.m., the Defendant was driving a Grey Toyota Hilux Pickup ("Hilux pickup"), bearing license plate number CZL – C-08731 , on the Patchakan/ Chan Chen Village, Corozal District road in a south to north direction, that being in the direction from Patchakan to Chan Chen Village, Corozal District.

[28] On that date, at that time, Anibal Mena (the deceased) was driving a Red Meilun Motorcycle ("the motorcycle") bearing no license plate with VIN No. LF3PCK9J5DA000154, on the Patchakan/ Chan Chen

Village Road in a north to south direction, that being in the direction from Chan Chen Village to Patchakan Village.

[29] While driving on the Patchakan/ Chan Chen Village Road, in a south to north direction, the Defendant on the right-hand side of the road, turned left to go onto an unnamed feeder road as the deceased travelled on the right-hand side of the same road in a north to south direction.

[30] As the Defendant was turning left onto an unnamed feeder road, the deceased swerved left to avoid colliding into the Hilux pickup; however, the motorcycle impacted onto the right rear of the Hilux pickup.

[31] The motorcycle landed 71 feet 10 inches away from the point of impact on the left side of the road when travelling from Chan Chen Village to Patchakan Village, and the deceased landed in a face down position with his head facing a southerly direction and his feet facing a northerly direction near the motorcycle.

[32] The deceased was immediately rushed to the Corozal Community Hospital and was later transferred to Karl Heusner Memorial Hospital and then to Belize Medical Associates. He succumbed to the injuries at the Belize Medical Associates and was pronounced dead on the 12th of September 2020 by Dr. Ninfa Ken.

[33] On the 14th of September 2020, Juan Tzib, the deceased's brother in law, identified the body of the deceased. Dr. Lloyd Ken then conducted a post mortem examination and concluded the cause of death to be Acute Respiratory failure due to Red Hepatisation Pneumonia with Pulmonary Infection and Saddle Pulmonary Thromboembolism due to comatose status as a consequence of Road Traffic Accident with blunt force Traumatic Injuries to the head.

[34] A urine sample was taken from the Applicant on the 3rd of September 2020 for the purpose of testing the Blood Alcohol Concentration. The analysis results demonstrated that there was no ethanol detected.

[35] On the 3rd of September 2020, while at the Corozal Police Station, the Defendant gave an open statement to the police where he stated: "I was on the Patchakan road travelling from a south to north direction and upon reaching at the lane to my farm on an unnamed road, I put my indicator showing that I would turn left. I then saw two motorcycles coming in the opposite direction in a very fast speed. I had already made the turn in my lane when I heard a sudden bang and felt the impact at the back of my vehicle on the passenger tail side."

[36] On the 28th of September 2020, at 10:00 a.m. the Defendant was arrested and charged with the offences of Manslaughter by Negligence, Causing death by careless conduct, Drove Motor Vehicle without due care and attention, and failure to give way to a motor vehicle when changing direction.

[37] On the 14th of April 2022, the Defendant was indicted for one count of Causing Death by Careless Conduct contrary to section 108(2) of the Code.

Victim Impact Statement

[38] The Court was provided with the victim impact statement of the wife of the deceased. She indicated that the death of the deceased had a severe emotional and financial impact on their family. In particular she indicated that her son who witnessed the accident blamed himself for the death of the deceased and was left with significant emotional and psychological scars as a result. The economic impact of the death of the deceased has also resulted in a change in lifestyle for the family with the family initially having to resort to selling food on the side of the road to make ends meet.

Analysis

Starting Point

[39] In arriving at the starting point the Court is guided by the provisions of the **PSRASA** and the authorities cited above. Considering the ideological aims of sentencing, the Court finds that on these particular facts the aims that take prominence are the retributive and deterrent aims.

[40] Pursuant to the guidance in **Persaud**, the Court considers the following aggravating features of the offence:

- a) The Nature and Seriousness of the Offence
- b) Prevalence of the Offence
- c) The accident and injuries to the deceased were witnessed by his son
- d) The death of the deceased had considerable effect on the deceased family – emotional and economic

[41] The Court also considers the following as a mitigating circumstance of the offence:

- a) The circumstances of the commission of the offence in this case did not evince a callous disregard for the safety of other road users

[42] In this Court's opinion the commission of the offence, as outlined in the facts above, does not fall into the category of the 'worst of the worst'. There is therefore no need to depart from the established range of sentences as set out in the authorities. Considerable regard is paid to the sentences handed down in **Smith** and **Gonzalez** and accordingly, the Court finds that an appropriate starting point is in the amount of \$4500.00.

Consideration of the circumstances of the Offender

[43] At stage two of the suggested methodology in **Persaud**, a sentencing Court must then consider the aggravating and mitigating circumstances of the offender. In this case, the Court finds that there are no aggravating circumstances of the offender.

[44] The Court finds as mitigating circumstances of the offender the following:

- a) His previous good character – Mr. Victorin is a family man with a wife and two children. He is a salesman for Brodies and devoutly religious.
- b) His genuine remorse.
- c) Stayed at the scene to render assistance after the accident.

[45]The Court therefore considers a downward adjustment in the amount of \$1500.00 is appropriate.

Discount for Guilty Plea

[46]The next issue that the Court must consider is the question of the appropriate discount for the guilty plea by the Defendant. The nature of the appropriate discount was discussed in **Persaud** where the court indicated:

*“A guilty plea was in the public interest as it avoided the need for a trial, saved victims and witnesses from having to give evidence and saved costs. **Best sentencing practice suggested that the discount should be approximately one-third for a guilty plea entered at the earliest possible opportunity, with a sliding scale for later pleas to at least ten per cent.**”* [emphasis mine]

[47]The quantum of the appropriate discount for the plea of guilty in the particular circumstances of this case turns on whether or not the Defendant can be said to have pleaded guilty at the earliest possible opportunity. The phrase ‘earliest possible opportunity’ ought not to be applied rigidly by the Court but must be given a contextual application appropriate to the circumstances of each case. The Court must assess the realistic opportunities, if any, that a Defendant had to plead guilty before the entering of the plea.

[48]In **Persaud** the guilty plea was entered at the beginning of the trial of the Appellant and the CCJ felt that in the circumstances a discount of one third was appropriate. It should be noted however that Barbados does not have criminal procedure rules which allow for the arraignment of the Defendant upon the matter first being called in the High Court.

[49] In Lauren Aguilera and Ors v The State²⁷, a decision of the Trinidadian Court of Appeal considering the question of what ought to be considered the first reasonable opportunity, Mohammed JA opined²⁸:

“...we consider that the first real opportunity to plead guilty is upon arraignment. While there is an earlier technical opportunity to plead guilty available at a preliminary enquiry, in the absence of case management rules and given the current state of court lists, this is not a first opportunity when viewed from any reasonable pragmatic point of view.” [emphasis mine]

[50] It should be noted that as in Barbados, Trinidad and Tobago allows for arraignment only at the start of trial and thus a plea taken at that time can be considered taken at the first reasonable opportunity depending on the circumstances of the case.

[51] In Belize however the **Criminal Procedure Rules**²⁹ ensure that a Defendant is arraigned at their first hearing in the High Court. Further the Judge is obligated, before the Defendant is arraigned, to make the Defendant aware of his various options which include but are not limited to engaging in the plea process or seeking a sentence indication of the applicable range of sentences or options for sentencing before entering a plea.

[52] In the instant matter, the Defendant was arraigned before Lord J and made aware of his options including that of seeking a sentence indication and he entered a plea of not guilty. This not guilty plea was maintained and the parties engaged in case management which was concluded in June, 2022. The matter was subsequently fixed for trial on at least 5 occasions prior to the matter being fixed for trial on the 12th March, 2024. The formal application for the sentence indication came on the 13th March, 2024 although notice of the Defendant’s intention to seek a sentence indication was sent to the Court and the Crown on the 7th March, 2024.

²⁷ (2016) 89 WIR 451

²⁸ Aguilera (ibid) pg 473

²⁹ Criminal Procedure Rules 2016 Belize

[53] It is also significant to note that up to the time of the taking of the guilty plea, there had been no material change to the proposed evidence of the Crown nor to the substantive charge faced by the Defendant.

[54] The Court notes that the Defence proffers by way of explanation for the timing of the application for the sentence indication that the Defence was awaiting word on whether compensation had been paid, to the family of the deceased and after receiving word that compensation was paid the application was made. This explanation does not assist the Defendant and if the court were to accept it, has the potential to make the decision to plead guilty seem tactical. In any event the Court rejects this explanation as Defence Counsel appeared to only receive confirmation from the Crown of the fact that compensation was paid after notice was given of the intention to seek a sentence indication. In all of the circumstances, the fact that compensation was paid therefore could not have formed a basis for the making of the application and accordingly does not assist the Defendant.

[55] This Court considers therefore that having regard to the above, the full one-third discount ought not to be awarded in this case and a discount of 25 percent is appropriate. Accordingly the sum is further discounted, leaving a figure of \$2250.00.

Credit for time served

[56] The issue of credit for time served in custody does not arise on the facts of this case.

Ancillary Orders

[57] In Gonzalez³⁰, the Court of Appeal also considered the approach of a sentencing court in respect of the disqualification from holding a drivers licence³¹ of a person convicted under s108. The Court of Appeal opined that there should not a rigid approach to the imposition of this sanction and it should only be imposed in circumstances which warrant such a sanction. The Court finds this statement of the law

³⁰ Para 21

³¹ Pursuant to s91 of the Motor Vehicle and Road Traffic Act Cap 230

particularly useful and does not consider this an appropriate case for the disqualification of the Accused from holding a driver's licence.

[58] Compensation has already been made to the family of the deceased by the Insurance Company and in those circumstances, the Court feels that compensation was not necessary in the circumstances of this case.

[59] No sentence or compensation can adequately address the impact of the loss of the deceased for the family of the deceased. However, the Court has fashioned a sentence that it considers appropriate in the circumstances and commensurate with authority and the denunciation of the Belizean community for offences such as these.

Disposition

[60] The Court's sentence is therefore as follows:

- a) The Defendant is fined in the amount of \$2250.00 in default 9 months imprisonment. The Defendant is given time to pay the fine until on or before the 20th May, 2024.

Raphael Morgan
High Court Judge
Dated 18th March 2024