

IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

RE20190028C

BETWEEN

THE KING

and

DEON SLUSHER

Prisoner

Before:

The Honourable Mr. Justice Nigel Pilgrim

Appearances:

Ms. Sheiniza Smith, Senior Crown Counsel for the Crown.

Mr. Dale Cayetano for the Prisoner.

2024: February 29th; and
April 18th.

MURDER-RE-SENTENCING

[1] Deon Slusher (“the prisoner”) was convicted, along with one other, after trial by judge and jury on 12th January 2004 of the 4th February 2002 murder of Phillip Chin (“the deceased”), contrary to section 106 read along with section 117 of the then **Criminal Code**¹ (“the Code”). The offending, in brief, is that on 4th February 2002 the prisoner and others hatched a plan

¹ Chapter 101 of the Substantive Laws of Belize, Revised Edition 2000.

to rob the deceased of his firearm, abducted him and intentionally, unlawfully and without justification shot him to death during the course of a robbery².

- [2] The prisoner was sentenced to death by the trial judge which was varied by the Court of Appeal to life imprisonment on 15th October 2004. No minimum term of that life sentence was set by the Court of Appeal acting in accordance with section 106(1) of the Code as then drafted. Subsequently, the National Assembly intervened and passed the **Criminal Code Amendment Act 2017** which provided as follows:

“106A(1):... every person who has been previously convicted of murder and is, at the time of the coming into force of the Criminal Code (Amendment) Act, 2017, serving a sentence of imprisonment for life, shall be taken before the Supreme Court for the fixing of a minimum term of imprisonment, which he shall serve before becoming eligible for parole, or for a consideration of whether he has become eligible to be considered for parole.”

- [3] The Caribbean Court of Justice (“the CCJ”), our apex court, considered the position of the imposition of life sentences in Belize in the context of that section in **August et al v R**³, per Byron P and Rajnauth Lee JCCJ:

“[125] In light of the findings above, it becomes necessary to address the fate of those persons currently incarcerated who were sentenced to life imprisonment for murder, under a now declared unconstitutional mandatory life imprisonment penal provision. In the exercise of our jurisdiction under s 20 of the Constitution, we must order that notwithstanding the provisions of s 106(A)(1), these offenders must be individually re-sentenced by a trial judge. Bearing in mind the utter abhorrence of society towards the crime of murder, the sentencing judge may well take the view that the fit sentence is one of life imprisonment unless, having regard to mitigating factors, a lesser sentence is deserved.

² See **Jeremy Harris and Deon Slusher v R**, Criminal Appeal Nos. 1 and 2 of 2004.

³ [2018] 3 LRC 552.

[126] Since the sentences of these persons have been vacated by this judgment, as a practical interim measure, we order that all such persons must remain incarcerated until, in relation to his or her case, respectively, a sentencing hearing is completed. In the event that the sentencing judge should decide that a fit sentence is one of life imprisonment, then the judge shall stipulate a minimum period which the offender shall serve before becoming eligible for parole, or for a consideration of whether the prisoner has become eligible for parole. We would not expect that exercise to be rushed, but the entire exercise should be completed within a reasonable time. For the avoidance of doubt, a similar reasoning is to be applied to any person sentenced under the new regime to a mandatory life sentence for murder.

...

[127]... We further order that the sentences of those persons convicted of murder and imprisoned pursuant to the now repealed s 106 of the Criminal Code are vacated. Section 106A notwithstanding, these persons must be re-sentenced and must remain incarcerated until the conclusion of their respective re-sentencing hearings”

[4] This re-sentencing exercise is made pursuant to this order of the CCJ on 29th March 2018.

The Legal Framework

[5] The Court of Appeal has comprehensively considered sentencing for murder in Belize in **Michael Faux et al v R**⁴ and made the following observations, 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 fixed term

⁴ Criminal Appeal Nos. 24-26 Of 2019.

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 R**⁵ 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

⁵ (2018) 93 WIR 132.

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 sentence imposed." (emphasis added)

[7] The Court is also guided by the decision of the CCJ in Calvin Ramcharran v DPP⁶ 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.

⁶ [2022] CCJ 4 (AJ) GY.

[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)

Factual basis of sentence⁷

- [8] The deceased, a land surveyor, owned a 38 special revolver which had his initials scratched on its right side. The prisoner and his confederates were aware of this. Earlier in February 2002, they sought to obtain information about the deceased from Katherine Fairweather, who at that time was aged 17. They wanted to know whether any other persons resided at his residence with him; his financial status and where he kept his gun; and what times he left home and where he would go. Katherine Fairweather was friendly with Rosita Castellanos, the girlfriend of the deceased. Rosita Castellanos had a conversation with the prisoner and his confederate at the house of Fairweather in the presence of Fairweather. During this conversation, the prisoner told her that he wanted the deceased's gun.
- [9] Shortly after the prisoner sought this information, Castellanos took the gun from the deceased's residence and showed it to Fairweather. Castellanos then hid the gun under her mother's car which was not in a working condition and which had been parked in front of her mother's house. Later that day, the deceased discovered that his gun was missing and sought to ascertain its whereabouts. He went to the house of Fairweather. There, he met and questioned Castellanos about the gun.
- [10] After the questioning had been completed, the deceased attempted to leave the house when the prisoner's confederate pushed him and pulled the gun from the waist of his pants. The confederate then proceeded to rob the deceased of his wallet and money. At that time, the prisoner was present. He had ordered Fairweather and Castellanos to leave the kitchen and to go upstairs.

⁷ Taken from the judgment of the Court of Appeal.

[11] Shortly after the two young ladies returned to the kitchen, the deceased was lying face down with his hands tied behind his back "with something like a black rope or cord". The confederate told Fairweather and Castellanos to go to the deceased's house and take all "valuables which could be sold".

[12] On returning to Fairweather's house, Castellanos and Fairweather did not see the prisoner but the prisoner and his confederate subsequently returned to the house. The prisoner went upstairs and while laughing, told Fairweather and Castellanos, that he had shot Chin three times, once in the chest, once in the back and once in the head for surety.

[13] The prisoner and his confederate had taken the deceased to his pick-up with his hands still tied behind his back.

[14] In his statement to the police, the prisoner said that he told the deceased that the confederate would not hurt him if he would just sit and be calm. He stated that he knew that his confederate was going to kill the deceased and he feared for his own life. He alleged that it was the confederate who shot the deceased.

[15] In his defence at trial, the prisoner raised the defence of alibi. He said that on 4th February 2002 he could not recall seeing either Fairweather or Castellanos.

[16] The prisoner was 19 years old at the time of the murder.

Analysis

[17] The Court begins, following *Persaud* by considering the aggravating features of the offending. The Trinidadian Court of Appeal decision of **Aguilera et al v The State**⁸ is helpful in the identification of those features in the case of murder. Those are, in the Court's mind, in this case as follows:

⁸ 89 WIR 451 at para 19.

- i. There was significant planning involved in this offence- This offending did not occur at the spur of the moment. The prisoner sought intelligence on the movements and wealth of the deceased before striking at a hardworking member of Belizean society.
- ii. There was the use of a weapon, namely a firearm- Belize, as the rest of the Caribbean, is reeling from gun violence and any sentence the Court imposes must deter those minded to engage in it to desist.
- iii. There were attacks to the head- There is evidence that the deceased was shot in his head by the prisoner "for surety".
- iv. The offending was committed with others- The sentence of the Court must deter others from forming criminal conspiracies, which are usually more successful than offending singly.
- v. The killing was callous and cruel- The prisoner was laughing while bragging about killing the deceased. The killing was unnecessary as the prisoner had already achieved his objective in the robbery.
- vi. An underlying offence for gain, namely robbery.
- vii. This is a serious and prevalent offence in Belize which needs to be deterred. Though there is no victim impact statement available, though requested from the Crown, the Court is willing to presume that there would have considerable trauma caused to the loved ones of the deceased by his brutal and senseless murder.

[18] There are no mitigating features in relation to this offending. It has been submitted that the prisoner co-operated by giving his statement to the police admitting involvement. The Court does not view that as mitigating as the admission was retracted at trial, as well as it contained a lie putting the blame for the actual shooting on the confederate and not the prisoner. This was not a case where the prisoner "pleaded guilty from the police station" and adopted his statement and decided to forego a trial. He vigorously asserted his innocence.

[19] The Court must now consider a starting point. The range of sentence for murder as noted in *Faux* is a life sentence with a minimum term of between 25-37 years unless there are ameliorating factors which necessitate a fixed term sentence. In this case there is a basis for a fixed term sentence, namely his youth being an immature 19-year-old at the time of the killing, like the appellant in *August*. The Court in these circumstances would impose a fixed sentence on the prisoner.

[20] The Court views this killing by the prisoner as wanton, senseless and cruel which deserves punishment at the higher end of the range. The prisoner literally laughed while recounting how he had killed a human being like a wild animal. The Court finds that having regard to the aggravating factors above, particularly its cruelty, finds a starting point of a fixed term of 32 years imprisonment is appropriate, just a few years above the starting point in the case of the appellant *Faux* and within the suggested range of sentence.

[21] The Court would now individualize the sentence.

[22] The aggravating factors in relation to the offender are his 19 breaches of prison discipline from 2009-2022, many of which worryingly include attempts to smuggle drugs into the prison as recently as October 2022. This may be a worrying sign of an unwillingness to mend his ways. This will cause the Court to uplift the term of imprisonment by 2 years to 34 years imprisonment.

[23] The mitigating factors in relation to the offender are as follows:

- i. Positive activities in the prison- The prisoner has completed several courses from 2011 onward in usable skills like a medical responder. He has seemingly sought to better himself by participating in substance abuse courses. The Court sees this as efforts by the prisoner at rehabilitation.
- ii. A positive social inquiry report- The prisoner over 2019 and 2023 has positive findings in his social enquiry report. They describe him as intelligent, possessing leadership qualities, kind to his family, remorseful and wanting to make something of himself who is no longer the lost soul without guidance that he

was when he committed the murder. However, in the public interest, which Barrow JCCJ noted in *Ramcharran*, was overarching the prisoner must pay the reasonable cost of what he has done.

[24] With a view to the prisoner's arc towards rehabilitation the Court will reduce the minimum term by 3 years to 31 years imprisonment.

[25] The Court would also vindicate the right of the prisoner to a fair hearing within a reasonable time under section 6(2) of the **Constitution**, the order for re-sentencing by the CCJ being made over 6 years ago, by a reduction of 1 year from the sentence. This power is exercised pursuant to the guidance from the CCJ in **Solomon Marin Jr. v R**⁹.

[26] This would leave a final sentence of 30 years imprisonment.

[27] Pursuant to the Court's powers under section 162 of the **Indictable Procedure Act**¹⁰ as considered in **R v Pedro Moran**¹¹ the Court would order the sentence to run from 7th April 2002.

DISPOSITION

[28] The Court sentences the prisoner for the crime of the murder of Mr. Phillip Chin on 4th February 2002 to a term of 30 years imprisonment with effect from 7th April 2002.

Nigel Pilgrim

High Court Judge

Dated 18th April 2024

⁹ [2021] CCJ 6 (AJ) BZ at paras 104-112.

¹⁰ Chapter 96 of the Substantive Laws of Belize, Revised Edition 2020.

¹¹ Criminal Application No. 1 of 2017 at para. 38.