IN THE SENIOR COURTS OF BELIZE

NORTHERN DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO.: N16/2021

BETWEEN

THE KING

and

JESUS MONTEROSSO

Prisoner

Before:

The Honourable Mr. Justice Raphael Morgan

Appearances:

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

Mr. Leeroy Banner for the Prisoner

2024: May 16th

SENTENCING – MANSLAUGHTER

[1] MORGAN, J.: Jesus Monterosso ("the Prisoner") was indicted on one count of Murder, contrary to section 106 of the **Criminal Code**[1], ("the Code").

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

[2] This matter was fixed for trial on the 22nd February 2024 and scheduled to begin with a *voir dire* to determine the admissibility of the caution statement of the Prisoner. The matter was adjourned however to the following day due to the unavailability of Counsel for the Prisoner.

[3] On the 23rd February, 2024 Defence Counsel Mr. Banner orally indicated that the Prisoner intended to seek a sentence indication. The Court ordered a written application to be filed pursuant to the Practice Direction 298 of 2022 entitled **"Sentence Indications (Re-Issue)**" ("the Practice Direction") issued by then Ag. Honourable Chief Justice Arana. The matter was adjourned to the 29th February 2024 to facilitate the filing of the application.

[4] By application dated 28th February 2024 the Prisoner, with the consent of the Crown that there was a factual basis upon which the plea could be made, sought the following sentence indication from the Court:

a) A sentence that the court would impose should the Prisoner plead guilty to manslaughter by extreme provocation.

[5] The Court exercised its discretion in favour of granting a sentence indication and on the 19th March, 2024 gave the indication as follows:

a) The maximum sentence that the Court will impose should the Prisoner plead guilty to Manslaughter by extreme provocation is a custodial sentence of 15 years imprisonment

[6] On the 25th May, 2024 the Prisoner accepted the sentence indication and entered a plea of Guilty to Manslaughter by extreme provocation.

[7] On the 6th May, 2024 the Court held a mitigation hearing where the Prisoner called five (5) character witnesses and submissions were made on sentence by both the Defence and the Crown.

[8] In order to arrive at a fair and appropriate sentence the Court was also provided with the following:

a) Social Inquiry Report
b) Report from Kolbe Foundation (Prison)

c) Antecedent Record of the Prisoner
d) Psychiatric Report from Dr. Matus.
e) Victim Impact statement of Leidy Cano

[9] The Court now proceeds to pass sentence.

Legal Framework

[10] The ideological aims/principles of sentencing were identified by the CCJ in **Lashley v Singh**[2]. 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

[11] These principles were restated and emphasised by Jamadar JCCJ in **Pompey v The DPP**[3]. 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 offender[4].

[12] 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**[5] (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****,*

[2] [2014] CCJ 11 (AJ) GY
[3] [2020] CCJ 7 (AJ) GY
[4] Alleyne v The Queen [2017] CCJ (AJ) GY
[5] Chapter 102:01 of the Substantive Laws of Belize, Revised Edition 2020, see section 25.

*(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)*

[13] 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**[6], 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 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)*

[14] The Court is also reminded of the guidance given by Barrow JCCJ in **Calvin Ramcharan v DPP**[7] on this issue:

[6] [2018] 93 WIR 132

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

> *"[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)*

[15] The penalty for manslaughter other than by gross negligence is contained in **section 108(1) (b)** of the Code which prescribes a maximum sentence of life imprisonment. There is no fixed minimum term. **In accordance with the general principles of sentencing a maximum sentence ought properly to be reserved for cases that fall into the category of the 'worst of the worst'**.

[16] Our Court of Appeal has considered the appropriate sentencing range for persons convicted of manslaughter in several cases namely **DPP v Clifford Hyde**[8], **Yong Sheng Zhang**[9], **The Queen v Hilberto Hernandez**[10] and culminating in **Tony Pasos v The Queen**[11]. The Court of Appeal holding in **Pasos** that the range of 15-25 years indicated in **Hyde** was not limited to street fight types of manslaughter cases but rather they were applicable to cases of manslaughter generally.

[17] The Court of Appeal has further indicated that cases which are on 'the borderline of murder' should expect to receive sentences on the upper end of that range. This is reflected in the observations of Barrow JA (as he then was) in **Zhang**[12] where he opined:

> 14. The judgment of Sosa JA in Criminal Appeal No. 2 0f 2006 **D.P.P. v Clifford Hyde** at paragraph 12 (unreported; judgment delivered 22 June 2007) establishes that for the standard street fight type of manslaughter case the usual range of sentence is between 15 to 20 years imprisonment. The fact that there is a usual range of sentence underscores the fundamental truth that the starting point in imposing a sentence

[8] Criminal Appeal no. 2 of 2006
[9] Criminal Appeal no. 13 of 2009
[10] Criminal Application for Leave to Appeal no. 16 of 2010
[11] Criminal Application for Leave to Appeal no. 11 f 2016
[12] Ibid

> is not usually the maximum penalty. **As a matter of reasoning the maximum penalty must be considered as appropriate only for the worst cases**. The features of this case make clear that it does not fall into the category of worst cases. **A significant difference exists between this case of unintentional homicide and homicide cases "on the borderline of murder", in which this court has upheld sentences of 25 years imprisonment; see Criminal Appeal No. 10 of 1996 Enrique Soberanis v The Queen and other appeals at p. 4 (unreported; judgment delivered February 1997)**.

[18] This Court agrees with the Court of Appeal in **Pasos** that the final sentence in **Zhang** was not reflective of the usual range of sentence given for manslaughter. The Court however found the following general statement of principle from Barrow JA in **Zhang** helpful:

> [13] In the application of these sentencing principles guidelines have been developed that assist a sentencing judge in arriving at a sentence that is deserved, which is to say a sentence that is fair both to the convicted person and to the community, including the family and friends of the victim. **A principal guideline is that there must be consistency in sentences. Where the facts of offences are comparable, sentences ought to be comparable, if rationality is to prevail. The objective of consistency has led to the emergence of ranges of sentences**…….**The particular facts of a case will determine where in the range the sentencing court will come down; thus, an offender who had some time to regain self-control after provocation will attract a heavier sentence than the offender who had no time to regain self-control. An offender who delivers one blow in response will deserve a lesser sentence than one who delivers multiple blows. The weapon used and how likely it was to be lethal may be another factor in determining degrees of culpability and therefore severity of punishment. Similarly, an offender who has a criminal record will not get as much of a reduction from the starting sentence as one who has no criminal record and is widely regarded in his community as a good and caring person. These examples are illustrative and not exhaustive**.[emphasis mine].

[19] The Court is also guided by the words of the Court of Appeal in **Edwin Hernan Castillo v R**[13] where Sosa P indicated:

> **[30]** It seems opportune to make a few important general remarks on the topic of a sentencing range at this point in the present judgment. In *Hyde's* case, cited above, the sentencing range in respect of manslaughter cases arising from fatal stabbings was held to be 15 to 25 years although the only cases treated in the judgment as worthy of serious consideration involved sentences of 15 to 18 years only. As is revealed in that judgment, it had been submitted on behalf of the Director of Public Prosecutions in that case that the upper end of the

[13] Criminal Appeal no 11 of 2017

> applicable range should be 20 years, whilst counsel for Mr Hyde was content to take the position that such end should be as high as 25 years (contending, however, that the appropriate sentence for his client should be no more than 15 years' imprisonment). **A sentencing range is not, however, inscribed in granite. It is no more than a general guideline. There will inevitably arise from time to time cases calling for deviation therefrom. Like courts in other jurisdictions, this Court must be alive to the fact that the variety of factual situations in which manslaughter is perpetrated is unlimited. Quite apart from that, courts interested in maintaining the essential confidence and trust of a law-abiding public must be prepared to make realistic and hard admissions about the lower end of a sentencing range if the prevalence of the crime to which it applies is not decreasing or, even worse, keeps increasing. Indeed, this Court regards itself as free, in an exceptional case, to fix a sentence beyond even the higher end of the sentencing range where a particular mix of aggravating and mitigating features so demands. The sentencing range is thus an aide used early on in the sentencing exercise, whereas the features, aggravating and mitigating, of the particular case come into play later**. [emphasis mine].

[20] The Court therefore understands that a sentencing range is not meant to be a metaphorical straitjacket for any sentencing court. It is meant as a guideline to show the general attitude of the Court in particular and society at large towards the commission of a particular offence. Sentencing ranges are also meant to evolve over time in order to reflect the changing societal attitudes towards the denouncement of certain criminal action. Further, in exceptional cases a Court is permitted to depart from the sentencing range and impose a sentence that is higher or lower than previously imposed. Any such departure, however, should be accompanied by reasons justifying the disparity.

[21] 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 Prisoner, 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 exceeding the indication. The starting point however is determined after the Court has had the benefit of the fullness of a sentence hearing with 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**[14] 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):

[14] Cr. App. No. P033 of 2019

*"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].*

Agreed Summary of facts

[22] On 1st of February 2020 at around 9:00 pm, Daniel Cano visited the home of his friend and colleague, Antonio Aban, in the village of Concepcion, in the Corozal District. Both Daniel and Antonio then began to consume beers. At around 11pm, the Prisoner arrived at the residence of Antonio Aban.

[23] Upon his arrival, the Prisoner began to speak with Kristy Ruiz, sister-in-law of Antonio. The Prisoner gave Antonio money for them to purchase beers and provided them with the keys to his vehicle that he had arrived in. Antonio, his wife and Daniel Cano proceeded to Libertad Village, Corozal District, where they bought beers and thereafter returned to Antonio's home.

[24] At around 11:30 pm, they arrived at Antonio's home. At the time, the Prisoner was inside Antonio's home with Kristy Ruiz and Leidy Aban. Leidy Aban then left Antonio's house. Daniel and Antonio continued to drink beers in Antonio's yard while the Prisoner and Kristy remained speaking inside the house.

[25] At around 1:00 am, Daniel then stated he was going to leave and climbed on his bicycle. Kristy Ruiz then left Antonio's house while Daniel and Antonio continued talking in Antonio's yard.

[26] Daniel and the Prisoner then began to argue in front of Antonio's residence. The Prisoner got closer to Daniel and Daniel got off his bicycle and stated that he was playing. The Prisoner tried to hit Daniel, but Antonio got in between them. The Prisoner pushed Antonio to the ground causing him to fall and Daniel ran closer to the clothesline. The Prisoner chased after Daniel, swung his arm in the direction of Daniel who was standing in front of him stabbing him once in the chest. Daniel then walked to the clothesline, grabbed a line stick and broke it with his knee. The Prisoner ran to his car and left Antonio's residence. Daniel then fell on his knees. Antonio asked him what had happened and he stated "he stabbed me, he stabbed me."

[27] Daniel Cano was then transported to the Corozal Community Hospital by Daniel Aban. On their way to the hospital, Daniel Cano was transferred into an ambulance. Upon arrival at the Corozal Community Hospital on the 2nd of February, 2020 at 1:35 am, Daniel Cano was pronounced dead by Dr. Angela Gilharry.

[28] On that same day at around 3:06 am, the Prisoner handed himself over to the Corozal Police Station where he was detained for the crime of murder. The Prisoner was seen with abrasions to his body and he was photographed by the Crime Scene Technician.

[29] On the 3rd of February 2020 at 11:23 am, the Prisoner was interviewed at the Corozal Police Station. In his interview, he stated that Daniel Cano began to tell him things and admitted to grabbing a knife from the table. He thereafter gave a statement at 12:49 pm under caution where he re-stated that Daniel Cano began to tell him things and admitted to grabbing a knife from a table.

[30] On the 6th of February 2020, Dr. Loyden Ken conducted a post mortem examination on the body of Daniel Cano and opined that his cause of death was hypovolemic shock due to internal exsanguination as a consequence of a single, penetrating stab wound to the chest and that severe force was used to penetrate the sternal bone.

[31] The Prisoner was charged and later indicted for the offence of Murder.

Victim Impact Statement

[32] The Court was also provided with the victim impact statement of the sister of the deceased Leidy Cano. Ms. Cano indicated that the death of the deceased had a severe emotional impact on their family. There was an immediate impact on both herself and her mother (now deceased) as they both had to seek medical attention to cope with the stress of the death. They suffered insomnia, anxiety and depression as a result. Her teenage son was also affected as he had to repeat second form after struggling to deal with the news. Ms. Cano further indicated that her children lost a father figure when their uncle died. The mother of the deceased, who suffered with kidney failure, also deteriorated at a rapid pace after his death, passing away six (6) months later.

Mitigation hearing

[33]At the mitigation hearing the Prisoner called the following witnesses:

1. **Mr. Aurelio Tun – Justice of the Peace –** Mr. Tun testified that he knew the Prisoner from when he attended school in Paradiso. He knew the Prisoner as a young man who sacrificed to help his parents. He would sell tomatoes and sweet peppers for his parents. He would also sell recycled old iron. He also knew that he was a very good father and that if he were to be released, the Prisoner promised to be a better young man.
2. **Gloria Monterosso – Mother of the Prisoner –** Mrs. Monterosso testified that the Prisoner was always a good child who did not give trouble at home. She asked the Court to have mercy on the Prisoner because he has a child and they need him at home. In response to the Court she indicated that his child is eight years old and has a heart problem. The heart problem is in need of surgical intervention.
3. **Adrian Ramirez – Brother in law of the Prisoner –** Mr. Ramirez testified to the previous good character of the Prisoner and expressed his shock that the Prisoner was involved in an offence like this as it was totally out of character for the person that he knew.
4. **Maria Anderson – Aunt of the Prisoner –** Ms. Anderson also testified to the previous good character of the Prisoner. She identified him as hardworking and helpful. She also testified that she was surprised that the Prisoner was in this situation as she did not know him to be a troublemaker while growing up.
5. **Juan Anderson – Uncle of the Prisoner –** Mr. Anderson testified in a similar vein to his wife as he indicated that he knew the Prisoner to be a respectful person especially with family or relatives. He further stated that the Prisoner was a good person, hardworking and both mother and father to his daughter. He asked the Court to have mercy on his nephew.
6. **Jesus Monterosso – The Prisoner –** The Prisoner made a statement from the dock at his mitigation hearing indicating that he was genuinely remorseful. He asked the Court, his family and the family of the deceased for forgiveness for his actions. He stated that every day he regrets his actions. He indicated to the Court that at the time of the incident he was only twenty years old and immature. He further explained that he had learnt from the programs in the prisons about making amends and that he was in court to make direct amends and ask everyone for

forgiveness. Lastly he indicated that he got carried away in the moment and asked the Court again for mercy and forgiveness.

The Reports

Letter from Kolbe Foundation Letter

[34] The Court was provided with a letter from Kolbe Foundation. The letter indicated that the Prisoner was admitted to Prison on the 5th February, 2020 for the crime of murder. The Prisoner during his time in prison has not violated any prison rules. Kolbe's record also indicates that he has completed a rehabilitative program "Facilitator Training" and received a certificate of participation from their Education and Rehabilitative Department.

Psychiatric Report from Dr. Matus

[35] A psychological report was obtained from Dr. Matus indicating that the Prisoner was fit to be sentenced as he knows that he was convicted of a crime, he knows the reasons for the conviction and is aware of the possible penalties and why the court can sentence him to an appropriate punishment.

Social Inquiry Report

[36] A social inquiry report was done where interviews were conducted with the Prisoner, members of his immediate and extended family and co-workers. The report indicated *inter alia*:

a) The Prisoner indicated that the provocative conduct of the deceased consisted of belittling him because the deceased thought he would not pay for a drink and further the deceased insulting his manhood by telling him he behaved like a girl.
b) The Prisoner acknowledged that his drinking on that night contributed to his loss of self-control.
c) Upon sobering up, he realised what he had done and turned himself into the police.
d) The Prisoner made genuine expressions of remorse for his actions.

e) The Prisoner has made genuine attempts at rehabilitation. He has participated in a rehabilitative program at Kolbe. He is also working in a shop called Coke at the prison where inmates sell supplies to the public.

f) The Prisoner's future plan is to find a job after being released to do work with his uncle as a plantation farmer.

g) Interviews conducted with family members and co-workers portrayed the Prisoner as a quiet, caring young man and who acted entirely out of character on the night in question.

h) His daughter Daniela, her mother and her maternal grandmother describe the Prisoner as an excellent father. Impressively both his daughter and his grandmother agree that he is a better parent than her mother.

i) There is no indication of an alcohol issue that caused harm or any negative demeanour to anyone outside of the incident for which the Prisoner finds himself before the Court.

Antecedent Report

[37] The antecedent report of the Prisoner showed that he has no previous convictions.

Submissions by Counsel

Defence Submissions

[38] Defence Counsel that an appropriate starting point for the offence would be below 15 years having regard to the facts of the offence. The Defence suggested that the Court should give a starting point of 8 years and while paying due regard to the cases of **Hyde** and **Pasos** above, the Court should be cognizant that those cases didn't involve guilty pleas and went to a full trial.

[39] The Defence commended to the Court the fact that the Prisoner turned himself into the police and gave a statement to the police. The Defence further highlighted the fact that there was only one fatal stab wound and this was as a result of provocative conduct by the deceased. The Defence also asked the Court to view the incident as a one off incident as the Prisoner is not a violent person and has committed no prison infraction.

[40] Defence Counsel also highlighted the fact that the Prisoner pleaded guilty and didn't waste the Court's time. As a means of explanation for the lateness of the sentence indication application, the Defence suggested that cases were not actively managed in the way that they are currently as for quite some time during the Covid19 pandemic there was no sitting judge in Orange Walk. Even when the matters were case managed there was not a robust interrogation of the issues as currently happens. In those circumstances, there was not a realistic opportunity for the Prisoner to plead guilty.

The Crown's Submissions

[41] Crown Counsel Ms. Cuello submitted to the Court that a custodial sentence is appropriate for the offence on the facts as admitted.

[42] The Crown further submitted that the relevant sentencing range is **15-25** years and that the Court should set a starting point of between **18-20** years. In that regard the Crown highlighted that the Post Mortem determined that the wound inflicted on the deceased was done with severe force. To support the suggested starting point, the Crown highlighted *inter alia* the following decisions:

a) **R v Adan Meza**[15] – In this matter the Accused was indicted on 1 count of Murder but convicted of Manslaughter. He was sentenced to 18 years imprisonment in 2018. In this matter the deceased was at a dance when he pushed a man in the chest causing him to fall to the ground. The brother of the man who was pushed, pulled out a knife from his waist and inflicted several stab wounds to the deceased. The Accused and his brother then fled the scene and the injured man was immediately taken to the hospital but soon after succumbed to his injuries.

b) **R v Keith Gaynair**[16] – In this matter the Accused was indicted on 1 count of Murder but convicted of Manslaughter. He was sentenced to 15 years imprisonment in 2018. In this matter three students were at a street vendor when the Accused rode by on a bicycle shouting to one of them that it was him that he wanted. He pulled out a knife from his pants and approached one of the

[15] N27 of 2017
[16] N32 of 2014

students who ran away. The Accused, still armed with the knife then stopped chasing the student, returned and approached the other students. One of them hit the accused with a padlock and the accused inflicted one stab wound to the right side of his chest. The injured student was transported to the hospital where he died shortly after.

c) **R v Stephen Williams**[17] – In this matter the Accused was indicted on 1 count of Murder but convicted of Manslaughter. He was sentenced to 15 years imprisonment in 2019. In this matter an eyewitness was sitting outside her home when her neighbour and friend came by. He was drinking Campari. The eyewitness decided to go into her house but upon walking inside she heard an argument between her neighbour and another man. The other man was accusing the neighbour of stealing his bicycle. She walked outside and saw her neighbour making fake motions as if he would hit the other man. She observed the other man withdrawing an orange in color object from the neighbour's stomach. The neighbour then shouted to her that Steven had just stabbed him. She walked over to him and saw blood on his shirt. Her neighbour then went to his grandmother's house which was nearby, all the while saying that Steven stabbed him. He collapsed shortly after. He was pronounced dead at the hospital.

N.B. These decisions were unreported and did not contain any record of the aggravating and mitigating factors taken into account by the Court when imposing the sentences highlighted. These are also final sentences which do not give an indication of the starting point for the sentences that were eventually imposed. The Court however found these authorities useful for highlighting the general attitude of the Court towards sentences in matters akin to the case at bar.

[43] Crown Counsel accepted that the Prisoner should be given credit for his genuine remorse and his co-operation with the police after the commission of the offence. The Crown contended however that the Court should not place great weight on the rehabilitative progress of the Prisoner as he had only done one program while in prison during the time that he has been incarcerated.

[44] The Crown further contended that the Prisoner should not be given the full 1/3 discount for his guilty plea as the plea was not made at the earliest possible opportunity.

[17] N2 of 2017

Analysis

Starting Point

[45] In arriving at the starting point the Court is guided by the provisions of the **PSRASA** and the authorities cited above.

[46] Pursuant to the **PSRASA** the Court must first consider whether the offence is so serious that only a custodial sentence can be justified for the offence. It is this Court's opinion that a custodial sentence is warranted having regard to the facts as accepted by the Prisoner. This determination is given greater force when one considers that the National Assembly in its wisdom prescribed a maximum sentence of life imprisonment for the offence of manslaughter. Life imprisonment being one of the most severe maximum penalties prescribed for criminal offences. Manslaughter therefore remains one of the most serious criminal offences and it will only be in an exceptional case that a custodial sentence will not be warranted. Commendably no such suggestion of a non-custodial sentence emerged from the Defence.

[47] 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.

[48] 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 incident and injury to the deceased were witnessed by the friends of the deceased.
d) The death of the deceased had considerable emotional effect on the family of the deceased.
e) The use of alcohol by the Prisoner which led to the loss of self-control.

[49] The Court finds the following as mitigating features of the offence:

a) The Prisoner himself suffered minor injuries in the fracas with the deceased

b) The offence was not planned being precipitated by a loss of self-control due to provocation.

[50] 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'**. Further, there has been no suggestion made before this Court that there are no prospects of rehabilitation for the Prisoner which would warrant the imposition of a sentence of life imprisonment.

[51] This case is also not an exceptional case which warrants a departure from the sentencing range set out in **Hyde** and **Pasos**.

[52] The following excerpt from the judgement of the Court of Appeal in **Pasos** lends some assistance in determining the appropriate starting point in the instant matter:

> **"[16]** It is obviously not for this Court to embark on a critique of the 2010 reasons for judgment in *Zhang,* which are, on their face, reasons for judgment of a panel of three of its then members. But deal with the astounding central submission of Mr Elrington in a no-holds-barred fashion we assuredly must. That submission, that the range of sentences for manslaughter should be from three to seven years, as in England, indefensibly turns a blind eye to just about all that has happened in terms of the sentencing policy in manslaughter cases in this Court beginning with its landmark decision in the famous trilogy consisting of *Soberanis v R*, Criminal Appeal No 10 of 1996, *Raymond Flowers v R* Criminal Appeal No 11 of 1996 and *Gregorio Osorio v R*, Criminal Appeal No 12 of 1996 (composite judgment delivered on 4 February1997), this Court's long-in-coming vigorous reaction to the unprecedented upsurge in serious crimes of violence which began in Belize in the 1980s. The Director has traced the relevant history with references to some of the major manslaughter cases leading up to and following after *Hyde* in 2007, in which last-mentioned case the Court gave a carefully considered sentencing range for the type of case then before it, a range which took into account the fruits of research conducted by counsel (in a case unlike *Zhang* in that both sides were legally represented) following a special request from the bench. The cases so referred to by the Director range over a broad time span of some 15 years, from ***Moriera v R*, Criminal Appeal No 12 of 2001 (judgment delivered by the Court - Rowe P, and Mottley and Sosa JJA – on 17 October 2002), a case of manslaughter involving death by a single stab wound, in which we imposed a sentence of 15 years' imprisonment, to *Bush v R*, Criminal Appeal No 12 of 2014 (judgment delivered by the Court – Sosa P and Awich and Ducille JJA - on 24 March 2017), another case of manslaughter involving a single but fatal stab wound, in which we affirmed a sentence of thirteen years' imprisonment.** In between these two cases are others such as (i) *Diego v R*, Criminal Appeal No 24 of 2002 (judgment orally delivered on 13 March 2003), involving three stab wounds, in which the

Court – Rowe P and Sosa and Carey JJA – affirmed a sentence of 18 years; **(ii) *Wade v R*, Criminal Appeal No 12 of 2005 (judgment delivered on 14 July 2006), involving a single and fatal stab wound, in which the Court – Mottley P and Sosa and Carey JJA – also affirmed a sentence of 18 years; and (iii) *Tillett v R*, Criminal Appeal No 21 of 2013 (judgment delivered on 7 November 2014, involving another single stab wound which proved fatal, in which the Court – Sosa P and Morrison and Hafiz Bertram JJA – affirmed a sentence of 12 years.** These cases, taken together, amply demonstrate that this Court has, both before and after *Zhang*, been either affirming or imposing sentences well above the upper limit of the range propounded by Mr Elrington. If one thing is clear from this it is that, in Belize, an established range of sentence of between three and seven years for manslaughter cases similar to the instant one is neither in existence now nor has been in existence during the past 16 or so years." [Emphasis mine]

[53]The Court also found these decisions of the Court of Appeal particularly useful:

1. **Moreira (James) v R**[18] - Moriera was a case in which the Court (Rowe P and Mottley and Sosa JJA) substituted for a conviction for murder a conviction for the lesser offence of manslaughter. The sentence of the judge below was vacated and the Court of Appeal substituted a sentence of 15 years imprisonment for manslaughter. Moriera was a case where, much like the case at bar, there was an insult to the masculinity of the Appellant and an argument between the victim and the Appellant. In Moriera however the deceased had approached the Appellant evincing a desire to fight which was not present in this case.

2. **Smith (Steven) v R**[19] - This was another case of a fatal stabbing where the Court substituted a conviction for Manslaughter upon appeal. There was no quarrel or argument between the Appellant and the deceased. There was also no threat of violence made by the deceased to the Appellant prior to the stabbing. The Court of Appeal substituted a sentence of 18 years imprisonment.

3. **DPP v Clifford Hyde**[20] - Hyde was a case where there was a fight between the deceased and the Appellant after the deceased asked the Appellant to unblock his path out of a parking area in Belmopan. The stabbing of the deceased occurred after the altercation between himself and

[18] Criminal Appeal no 12 of 2001
[19] Criminal Appeal no 21 of 2001
[20] Ibid

the Appellant. The Appellant was sentenced to 12 years imprisonment at 1st instance. On Appeal by the Crown against the leniency of the sentence, the Court of Appeal substituted a sentence of 15 years imprisonment.

4. **Hughes (Bill) v R**[21] - In Hughes the deceased, along with other young men, were at the corner of Moho and Kanot Streets. A fight, which lasted 2 – 3 minutes, took place between the deceased and the appellant. The fight started when the deceased walked up to the appellant and gave him a punch in his face. After receiving this punch, the appellant took a knife with a four-inch blade from his right pants pocket and stabbed the deceased. The prosecution's witness, Richard Mendez said that, after the appellant stabbed the deceased, the deceased grabbed the appellant's arm and punched him in the face whereupon they fell to the ground. The appellant approached Mendez with a knife in his hand, whereupon Mendez armed himself with a knife and the appellant ran away. The deceased fell to the ground. After the deceased got up, a small amount of blood was seen in the region of his abdomen. At trial, evidence was led that the deceased had checked himself out of the hospital without permission and then was subsequently readmitted where he died due to septic shock from the stab wound. The Appellant was convicted of manslaughter at trial and sentenced to 15 years imprisonment. The Appellant's appeal against conviction was dismissed but the Court of Appeal in light of the Appellant's age (15 years of age at the time of the commission of the offence), the nature of the injuries suffered by the deceased and the unfortunate circumstances surrounding his treatment varied the sentence of 15 years to 12 years imprisonment.

5. **Edwin Hernan Castillo v R**[22] – another case of a fatal stabbing. In **Castillo** the Appellant and other friends had been drinking for the entire day. During the course of the day there were several arguments and insults thrown around the group. Between the deceased and the appellant, however, there had been no such remarks, recriminations or fighting at any stage. The appellant, entirely out of the blue, charged at the deceased and stabbed him on the left side of the chest with a short, narrow machete. The Appellant was convicted of Murder at trial but this was

[21] Criminal Appeal no. 26 of 2002
[22] Ibid

substituted for a conviction for Manslaughter upon appeal. The Court of Appeal in delivering the sentence identified several aggravating factors:

a) The attack was unprovoked
b) The attack was an armed attack with a sharp weapon, a machete
c) The Appellant himself was completely unharmed
d) The Appellant showed grave indifference to the gravity of the likely injury
e) The attack occurred in a spot that was easily accessible to the public
f) The Appellant had consumed alcohol and smoked marijuana before the attack on the deceased
g) The Appellant at trial had sought to cast blame on his dead uncle for the attack on the deceased.
h) A lack of genuine remorse on behalf of the Appellant.

The Court found that the only mitigating factor was the fact that the Appellant's actions were unplanned. In the circumstances, in light of the preponderance of aggravating factors, they substituted a sentence of 20 years imprisonment.

[54] It is worth noting that these are all sentences where the Appellants went to trial, were convicted, and then appealed where the convictions were substituted. Thus they would have not have had the benefit of the discount for the guilty plea. There is also no mention in the authorities as to whether any deduction was made for time spent in custody. The requirement for time spent in custody to be specifically deducted was only made clear with the decision in **Da Costa Hall v the Queen**[23] so it is not surprising that no deduction was made in the authorities cited above.

[55] It is also noteworthy that the cases which involved no provocative conduct on the part of the deceased attracted a higher sentence than those cases which involved such conduct. In particular, even in light of the preponderance of aggravating factors in **Castillo**, the Court of Appeal felt it prudent to impose a sentence of twenty (20) years imprisonment.

[23] (2011) 77 WIR 66

[56] Considering the facts of the commission of this offence and bearing in mind the twin principles of retribution and deterrence *vis a vis* this offender and *vis a vis* potential offenders, the Court cannot agree with the suggestion of the Defence that the appropriate starting point should be eight (8) years. To do so would be to pay scant regard to the facts of the commission of this offence. Such a starting point would also not reflect society's continued abhorrence of acts of violence, particularly those that end with the senseless loss of life as in this case.

[57] The Court therefore finds that the appropriate starting point in the instant matter is **18 years** having regard to the aggravating and mitigating features of the offence itself.

Consideration of the circumstances of the Offender

[58] 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.

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

a) **His previous good character** – The Prisoner had no previous convictions. Quite apart from having no previous convictions, the Court considers that the Prisoner was a person of actual good character prior to the commission of this offence. This can be gleaned from the social inquiry report and the mitigation hearing where everyone identified his quiet, hardworking nature and his dedication to his family.

b) **His genuine remorse** – The Prisoner has made several genuine declarations of remorse which the Court has paid considerable regard to. The Prisoner even repeatedly asked for forgiveness from the Court, his family and significantly the family of the deceased.

c) **The age of the Prisoner at the time of the commission of the offence** – The Prisoner was only twenty years of age at the time of the commission of the offence. The Court considers that while the Prisoner was an adult at the time of the commission of the offence, his immaturity at

the time ought to be taken into account in assessing the person who struck the blow that unfortunately took the life of the deceased.

d) **Co-operation with the Police** - The Prisoner surrendered to Police and indicated at the earliest opportunity that he had grabbed a knife in response to the provocative words of the deceased.

e) **The rehabilitative efforts of the prisoner while in prison** – the Prisoner has continued to turn his life around in prison. He has only participated in one program in the prison but he has also been working for the past six (6) months in the prison shop called Coke.

[60] The Court therefore considers a downward adjustment is warranted in the amount of **four (4) years**. This leaves a remaining sentence (notional term) of fourteen (14) years.

Discount for Guilty Plea

[61] The next issue that the Court must consider is the question of the appropriate discount for the guilty plea by the Prisoner. 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]

[62] The quantum of the appropriate discount for the plea of guilty in the particular circumstances of this case turns on whether or not the Prisoner 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.

[63] 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. In Belize, however, **the Criminal Procedure Rules**[24] 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.

[64] The Prisoner in the instant matter was arraigned and he entered a plea of not guilty to Murder. The Court's record does not indicate whether he was represented at the time of his arraignment and thus the Court is not prepared to hold that he was in a position to properly exercise the options presented to him or to understand the possibility of pleading to a lesser charge through overtures to the office of the Director of Public Prosecutions.

[65] The Court also accepts that a substantial portion of the life of this indictment was during the Covid 19 pandemic when the nation was coming to grips with the realities of navigating the deadly virus and accordingly the pace of criminal justice was slowed. It is also without dispute that during portions of the pandemic there was not a permanent sitting judge in the Northern District.

[66] The matter was eventually case managed by the Court but from the Court's record of the forms filed, the issue of extreme provocation was not raised by either party at that stage as an issue to be considered at trial. It would therefore appear that it is only upon a sober perusal of the file by both sides that an agreement was made on the cusp of trial. The Court also notes that the Case Management Part 2 Form canvasses with the Defence the possibility of a plea to any other offence and this is answered in the negative on the Prisoner's Part 2 Form. There was therefore at the very least at the time of the filing of the Part 2 Form during case management, an opportunity to consider whether an overture could be made

[24] Criminal Procedure Rules 2016 Belize

to the Office of the Director of Public Prosecutions to agree to a plea to the lesser offence of manslaughter.

[67] The failure to highlight provocation as an issue in the earlier stages of this matter moves the Court, at this juncture, to emphasize to all litigants the importance of case management. Case management is not meant to simply be a prelude to trial. It is intended for the careful interrogation of issues by Counsel for both sides which can result in the early completion of matters with guilty pleas or plea agreements. Defence Counsel in particular would do well to take advantage of the opportunities at case management to ventilate particular issues such as provocation prior to trial as it can result in the matter being compromised by way of a plea. Prosecuting Counsel should also take the opportunity through case management to raise issues that may give rise to a plea with the Defence.

[68] Our criminal justice systems throughout the Caribbean are plagued by various degrees of case backlog. The general consensus in light of this almost universal issue is that collectively as criminal justice stakeholders we cannot try our way out of the backlog. We must instead use tools such as rigorous case management and Plea Bargaining to assist in reducing the number of matters that go to trial so that only the cases that need to be tried are actually tried. In that vein the Court notes the newly passed **Criminal Procedure (Plea Discussion and Plea Agreement) Act 2024** and encourages parties to make full use of its provisions when it is eventually proclaimed.

[69] The Court also notes the timing of the application for a sentence indication in this particular case. Generally, 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.

[70] However, the Court is of the opinion that the earliest possible opportunity to plead guilty to the offence of manslaughter in the instant matter could only have arisen when an agreement was reached between the Crown and the Defence. The Prisoner remained indicted on the substantive charge of Murder up until the time his plea was taken. While there was **the opportunity** before to indicate that he was **willing** to

plead guilty to a lesser offence, it would be speculative to surmise that had such an indication been made then that an agreement would have been concluded.

[71] In the circumstances therefore the Court is minded to award the full one third (1/3) discount for the guilty plea of the Prisoner. Expressed in terms of years, this amounts to four (4) years and eight (8) months leaving a remaining sentence of 9 years and 4 months.

Credit for time served

[72] Pursuant to the decision of our Apex Court in **Da Costa Hall**, the Prisoner must be given full credit for the time spent in pre-trial custody prior to being sentenced. In the instant matter the Prisoner was taken into the custody of the Police on the 2nd February, 2020. He was received into the Kolbe Foundation Prison facility on the 5th February, 2020. This Court notes the helpful guidance in **Da Costa Hall** as to exactly what falls to be considered as pre-trial custody:

> "[40] **It would appear then that the legal basis for giving full credit is basic fairness, the avoidance of injustice or, formulated more positively, the interest of justice. Liberty is clearly highly valued by the Constitution. Liberty should therefore be the golden rule and detention, however it is called and for whichever reason it is imposed, must remain the exception to that rule**. In an 'ideal' world the presumption of innocence would require the courts not to incarcerate a person until he or she has been found guilty. But in the real world that is simply not possible. There are, perhaps unfortunately, many situations which make it necessary to detain some people before they are tried. This is especially unfortunate if that person is eventually found to be innocent. **But even in the case of a conviction it would be unfair to the prisoner not to acknowledge, in a very real and effective manner, that he has, albeit with hindsight, de facto been serving his sentence from the day he was detained**. Clearly, and I paraphrase here the words of the Supreme Court of Canada (Arbour J) in R v Wust36, pre-trial detention (sometimes called 'dead time') is not intended as punishment but it is, in effect, felt as punishment in the same way as if it were based upon a sentence. As succinctly stated by Arbour J:' "Dead time" is "real" time'! And justice, I would add, can only be obtained, or perhaps at best be approached, when realities are firmly acknowledged. In the Caribbean, that means Caribbean realities." [emphasis mine].

[73] While **Da Costa Hall** speaks mainly to time spent on remand, fairness equally dictates that time spent in the custody of the police prior to being charged also ought to form part of the period of pre-trial detention

to be credited. For example, in the instant matter, the Prisoner once he surrendered to the custody of the police on the 2nd February 2020 has been in custody since then. This Court is therefore prepared to credit the time spent in pre-trial detention for the Prisoner from the 2nd February 2020 and not the 5th February 2020. The Prisoner therefore will be credited for the time spent in pre-trial custody which amounts to Four (4) years three (3) months and fourteen (14) days.

Disposition

[74]The Order of the Court is as follows:

a) The Court finds that the appropriate starting point having regard to the aggravating and mitigating circumstances of the offence is **eighteen (18) years**.
b) The Court finds that there are no aggravating features of the offender. Having regard to the mitigating factors of the Prisoners, a downward adjustment is warranted in the amount of **four (4) years**.
c) The Prisoner is awarded the full 1/3 discount for his plea of Guilty to the offence of Manslaughter by extreme provocation. This discount amounts to **four (4) years and eight (8) months**.
d) The Prisoner is credited for the time spent thus far in pre-trial custody which amounts to **four (4) years, three (3) months and fourteen (14) days**.
e) The Prisoner stands convicted of Manslaughter by extreme provocation and will serve a term of imprisonment of **five (5) years and sixteen (16) days** to commence today.

Raphael Morgan
High Court Judge
Dated 16th May 2024