

IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO: C 65/2023

BETWEEN

THE KING

and

JULIO LOPEZ PEREZ

Prisoner

Before:

The Honourable Mr. Justice Nigel Pilgrim

Appearances:

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

Mr. Ronell Gonzalez for the Prisoner.

2024: June 26th

July 18th

GRIEVOUS HARM-SENTENCING

[1] **PILGRIM J.:** Julio Lopez Perez (“the prisoner”) is indicted for the offence of grievous harm arising out of the chopping of Neri Barrios (“Mr. Barrios”), contrary to section 81 of the **Criminal Code**¹ (“the Code”). The Prisoner requested a sentence indication, pursuant to Practice Direction 298 of 2022, from the Court during the case management process on 22nd

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

May 2024. The Court gave an indication on 30th May 2024 that the maximum sentence it would impose in this matter was one of 4 years imprisonment. That indication was accepted on 5th June 2024, before the expiry of the indication, and the prisoner pleaded guilty. That plea was accepted after the Court conducted the interrogation of the prisoner as required by Rule 9.13 of the **Criminal Procedure Rules 2016** (“CPR”), namely the Court was satisfied that the plea was being given because the prisoner committed the offence; that it was made voluntarily; and with an understanding of the consequences. The Court, after hearing a plea in mitigation, now must pass sentence on the prisoner.

The Legal Framework

- [2] The offence at bar is defined in the Code, where relevant, and the maximum penalty is, as follows:

*“81. Every person who **intentionally** and **unlawfully causes grievous harm** to a person shall be liable to imprisonment for seven years.”
(emphasis added)*

- [3] “Grievous harm” is defined at section 96 of the Code, along with its related definitions, as follows:

“...“grievous harm” means any harm which amounts to a maim or dangerous harm as hereinafter defined, or which seriously or permanently injures health, or which is likely to injure health, or which extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, member or sense;

...

“Harm” means any bodily hurt, disease or disorder, whether permanent or temporary;

...

“dangerous harm” means harm endangering life;

...

“maim” means the destruction or permanent disabling of any external or internal organ, member or sense;”

- [4] The elements of this offence, in the Court’s view, are as follows: (i) harm or maim was caused to the victim; (ii) that harm or maim rose to the level of the statutory definition of grievous, e.g. it was a serious injury to an external organ etc.; (iii) that harm was caused by the prisoner; (iv) that harm was caused unlawfully; and (v) that harm was caused intentionally.
- [5] In determining the propriety or otherwise of a custodial sentence on these facts the Court must have regard to the provisions of the **Penal System Reform (Alternative Sentences) Act²**, (the “PSRASA”) which provides, where relevant:

*“28.-(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...***

*2. **The gravity of a punishment must be commensurate with the gravity of the offence....”** (emphasis added)*

- [6] The Court now looks to the guidance of the apex court, the Caribbean Court of Justice (the “CCJ”) in the Barbadian case of **Teerath Persaud v R³** on the issue or the formulation of a just sentence, per Anderson JCCJ:

² Chapter 102:01 of the Substantive Laws of Belize, Revised Edition, 2020, see section 25.

³ (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)

- [7] The Court is also guided by the decision of the CCJ in **Calvin Ramcharran v DPP**⁴ 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

⁴ [2022] CCJ 4 (AJ) GY.

outcomes from other jurisdictions whose socio-legal and penal systems and cultures are quite distinct and differently developed and organised from those in the Caribbean.

[16] Jamadar JCCJ noted that in 2014 this Court explained the multiple ideological aims of sentencing. **These objectives may be summarised as being: (i) the public interest, in not only punishing, but also in preventing crime ('as first and foremost' and as overarching), (ii) the retributive or denunciatory (punitive), (iii) the deterrent, in relation to both potential offenders and the particular offender being sentenced, (iv) the preventative, aimed at the particular offender, and (v) the rehabilitative, aimed at rehabilitation of the particular offender with a view to re-integration as a law abiding member of society.**

[18]... **to find the appropriate starting point in the sentencing exercise one needed to look to the body of relevant precedents, and to any guideline cases (usually from the territorial court of appeal).**"
(emphasis added)

The Agreed Facts

- [8] On 7th November 2021, sometime around 5:30 a.m. in the Lords Bank village, in the Belize District, Mr. Barrios was attending a wake of a friend. He was inside the house talking to other persons, including the prisoner whom he knew for 2 months by face only. Upon Mr. Barrios turning his back to the prisoner, he suddenly felt a knock on the back of his head. He then touched his head and realized that he had been injured as blood was pouring down his hand. Mr. Barrios then turned around and saw the prisoner being held back from further advancing toward him. He was then informed that the prisoner had chopped him to the back of his head with a machete. They managed to subdue the prisoner and called the police and the ambulance.
- [9] Moments later the police arrived to assist, and Mr. Barrios was then taken to the hospital. He was treated for two chop wounds to his head which caused a skull fracture, and his

injuries were classified as grievous harm. The prisoner was then later arrested and charged. While in detention, the prisoner gave a statement under caution admitting to having chopped Mr. Barrios, whom he did not know.

Analysis

[10] The Court, following *Persaud*, will begin the sentencing process by seeking to identify the aggravating factors relevant to the offender. These factors, in the Court's view, are as follows:

- i. Serious physical harm was caused to the victim: Though a victim impact statement was unavailable because Mr. Barrios cannot be found, the Court is prepared to find, as a matter of human experience, that being chopped twice in the head with a resultant skull fracture would have caused serious physical harm to Mr. Barrios.
- ii. This offence is also prevalent.
- iii. Use of a weapon: A deadly weapon was used, namely, a machete.
- iv. Location of the injury: There were attacks to the head.
- v. The attack was cowardly and senseless: Mr. Barrios was attacked from behind and by someone he did not know completely unprovoked.

[11] The Crown has urged as a mitigating factor of the offending the fact that the prisoner may have been intoxicated. The Court rejects this contention for two reasons. Firstly, intoxication does not form part of the agreed and accepted facts of the plea. Secondly, voluntary intoxication which contributes to offending is an aggravating factor. The editors of the leading text **Banks on Sentence**⁵ opined:

"The fact that an offender is voluntarily intoxicated at the time of the offence will tend to increase the seriousness of the offence provided that the intoxication has contributed to the offending. This applies regardless of whether the offender is under the influence of legal or illegal substance(s)..."

An offender who has voluntarily consumed drugs and/or alcohol must

⁵ Volume 2, para 325.4.

accept the consequences of the behaviour that results, even if it is out of character.” (emphasis added)

[12] Indeed, in the judgment of the English Court of Criminal Appeal in **R v Louis George Rees et al**⁶, they considered the issue of voluntary intoxication on sentencing which the Court believes should apply with similar force in Belize, per Woolf CJ:

“9...When it is the habit of young men (and young women) to drink excessively and then behave out of character, it is important that the courts send a message that there are very real dangers in embarking in that sort of binge drinking. It may cause a person to behave in a way which is out of character. While the courts wish to be sympathetic towards offenders, they must bear in mind the consequences of the offence as a whole on the public. The problem is that when drinking at this level takes place, what starts as an exhibition of high spirits descends into conduct which is criminal.” (emphasis added)

[13] There are no mitigating factors of this offending.

[14] In arriving at the starting point the Court observes that Belize does not yet have formal sentencing guidelines though it happily takes judicial notice that they are not too far on the horizon. However, the Court found great assistance from the Eastern Caribbean Supreme Court’s, **“A Compendium Sentencing Guideline of The Eastern Caribbean Supreme Court, Violence Offences”**⁷ (“the ECSG”, Eastern Caribbean Sentencing Guidelines). The Court considers the ECSG in its sentencing process in reliance of the dicta of the CCJ in **Linton Pompey v DPP**⁸ per Jamadar JCCJ:

“[111] Thus, in so far as one may wish to look to other jurisdictions for trends in sentencing, one should first look to relatively comparable

⁶ [2006] 2 Cr.App.R.(S.) 20.

⁷ Re-Issue, 12th April 2021

⁸ [2020] CCJ 7 (AJ) GY

jurisdictions, such as those in this region....As I have already alluded to, a truly Caribbean jurisprudence must be born and grounded in the sitz im leben of Caribbean peoples and Caribbean spaces. (emphasis added)

[15] However, the Court notes that guidelines are not a strait-jacket and that judicial discretion must remain at the heart of the sentencing process, as noted by the CCJ in the Barbadian case of **Burton et al v R**⁹.

[16] This offence would be considered under the rubric of “inflicting unlawful violence with intent to cause really serious harm” under the ECSG. The Court in terms of the consequences of harm caused by this offence would categorise it as high, Category 2, as it caused serious physical harm to Mr. Barrios¹⁰. The Court in judging the seriousness of the offence also categorises it as high. This is on the basis that there was use of a weapon, namely a machete¹¹.

[17] The recommended ECSG range is one of 45-75% percent of the maximum sentence¹². The Court finds a starting point of 70% of the maximum sentence would be an appropriate one for this case, having regard to the seriousness of the offending in this case. This would result in a sentence of 4.9 years.

[18] The Court would then individualize the sentence of the prisoner.

[19] The two aggravating factors in relation to the offender are, firstly, his maturity at the time of the offending, namely 39 years old, and he was expected by his age to show more restraint and exercise better decision-making. The editors of the Trinidadian **Sentencing Handbook 2016**¹³ opined of this aggravating factor, “Where the offender is an adult person in society, he is expected to appreciate the consequences of his wrongful act.”

⁹ 84 WIR 84 at para. 13.

¹⁰ P. 5 ECSG.

¹¹ P. 6 ECSG.

¹² P. 14 ECSG

¹³ At p XLV.

[20] Secondly, he has a previous conviction and three prison infractions. They are minor so together with the other factor the uplift will be small, to 5 years and 6 months imprisonment.

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

- i. He has expressed genuine remorse.
- ii. Good prospects for rehabilitation: The prisoner is described by a former landlord as industrious, a good and loyal workman and a very good guy. He is a non-national who came to Belize to work and make a better life for his wife and 3 children back home. It appears that this offence is completely out of character for him. He has indicated, and it has not been contested, that he participated in the GRACE rehabilitative program at prison.

[22] These mitigating factors would cause the Court to reduce the sentence by 1 year and 6 months to 4 years imprisonment. The Court reminds itself of the guidance in the PSRASA that rehabilitation is a core principle of sentencing, however, it believes that a custodial sentence is commensurate with this offending looking at the aggravating and mitigating factors of both the offence and offender.

[23] The Court will apply a discount of the full one-third as this guilty plea was properly tendered at the earliest opportunity, as he was initially charged with attempted murder and has now had the opportunity to make this lesser plea.

[24] The Court would in this regard wish to thank the parties for their assistance in bringing the **Needham's Point Declaration on Criminal Justice Reform: Achieving A Modern Criminal Justice System** ("the Declaration") to life in the Belizean context. The Declaration requires that, "...courts should adopt a focused and integrated approach to eliminate criminal case backlogs, by using tools and measures such as robust case-management..."

[25] The parties in this matter, no doubt cognizant of the need to minimize backlog and the robust case management which this Court exercises, particularly, in terms of the interrogation

involved in the early identification of the issues¹⁴, began discussions on requests for a sentencing indication shortly after the filing of case management forms were ordered. Indeed, the Court gets the distinct impression that if the recently proclaimed **Criminal Procedure (Plea Discussion And Plea Agreement) Act, 2024** which authorizes plea bargaining, another Declaration recommendation¹⁵, were in force earlier this matter may have been out of the court system long ago.

[26] This discount will leave a sentence of 2 years and 8 months.

[27] The Court must now address the issue of the time spent on remand. The prison records demonstrate that the prisoner was remanded to prison on 9th November 2021 for both this offence and one for which he was sentenced to 6 months imprisonment. The Court is mindful of the guidance of the CCJ in **R v da Costa Hall**¹⁶ where they opined:

“[17]...time spent on remand should be taken into account...”

*[18] We recognise a residual discretion in the sentencing judge not to apply the primary rule, as for example: (1) where the defendant has deliberately contrived to enlarge the amount of time spent on remand, (2) **where the defendant is or was on remand for some other offence unconnected with the one for which he is being sentenced**, (3) where the period of pre-sentence custody is less than a day or the post-conviction sentence is less than two or three days, (4) where the defendant was serving a sentence of imprisonment during the whole or part of the period spent on remand and (5) generally where the same period of remand in custody would be credited to more than one offence. This is not an exhaustive list*

¹⁴ Pursuant to Rule 4.1(i) of the CPR.

¹⁵ Recommendation 10: “We the participants at this Conference themed, “Criminal Justice Reform in the Caribbean: Achieving a Modern Criminal Justice System”, endorse the following experiences, best practices, and recommendations:... That laws be enacted to guarantee prisoner remand timelines; to replace Preliminary Inquiries with sufficiency hearings and/or paper committals; provide for Maximum Sentence Indications (MSI) hearings and **effective Early Guilty Plea/Plea Bargaining Schemes**.” (emphasis added)

¹⁶ (2011) 77 WIR 66.

of instances where the judge may depart from the prima facie rule, and other examples may arise in actual practice.” (emphasis added)

[28] The Court will not credit his remand for the unconnected offence for which he was sentenced, the Court’s general view being that persons ought to account separately for unconnected offending as noted by the discretion recognised by the CCJ in **Bridgelall v Hariprashad**¹⁷. Therefore, his remand count will begin from 6 months after his remand date of 9th November 2021, which is 9th May 2022.

[29] The prisoner is still on remand. Consequently, the Court will backdate the sentence pursuant to the Court’s powers under section 162 of the **Indictable Procedure Act**¹⁸ as considered in **R v Pedro Moran**¹⁹.

DISPOSITION

[30] . The sentence of the Court is that the prisoner serves a sentence of 2 years and 8 months imprisonment with effect from 9th May 2022.

Nigel Pilgrim

High Court Judge

Dated 18th July 2024

¹⁷ (2017) 90 WIR 300 at para 32.

¹⁸ Chapter 96 of the Substantive Laws of Belize, Revised Edition 2020.

¹⁹ Criminal Application No. 1 of 2017 at para. 38.