

IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO: C80 of 2022

BETWEEN:

THE KING

and

KAREEM FRANKLIN

Defendant

Before:

The Honourable Mde. Justice Candace Nanton

Appearances:

Ms. Portia Staine-Ferguson, Senior Crown Counsel for the King

Mr. Ronell Gonzalez Counsel for the Defendant

2024: May 20; 21; 22; 23
 June 7
 July 22
 October 1; 9; 25; 28

Use of Deadly Means of Harm with Intent to Cause Grievous Harm (Sentencing)

Background

- [1] **NANTON, J.:** The Crown indicted the Prisoner for two counts of Attempt to Murder contrary to **Section 18 read along with Sections 107 and 117 of the Criminal Code**¹ arising out of an incident which is alleged to have occurred on 1st March 2020.
- [2] On 20th May, 2024 the trial by judge alone began with the arraignment of the Prisoner before this Court pursuant to **Section 65 A (2)(b) of the Indictable Procedure Act.**² After a full trial, this Court found the Prisoner not guilty to the two counts of Attempt to Murder, but found him guilty to two counts of the lesser offence of Use of Deadly Means of Harm with Intent to Cause Grievous Bodily Harm contrary to **Section 83 (b) of the Criminal Code.**
- [3] The case for the Crown, which was accepted by this Court, was essentially that police officers Stephen Choco and Joseph Sutherland were on mobile patrol in the Belize City District when they observed the Prisoner on the back of a motorcycle, which was being driven by an unidentified male. The occupants of that motorcycle aroused their suspicion and the police officers gave chase. The driver of the motorcycle sped off and the Prisoner seated at the back pulled out what appeared to be a firearm and fired shots in the direction of the police officers. Officer Sutherland fell off his own motorcycle, but was not injured, except for some minor abrasions due to the fall. Stephen Choco continued to give chase and the Prisoner continued firing at him. The Prisoner and the driver of the motorcycle made good their escape. The Prisoner was subsequently identified as the shooter through video footage obtained from the scene. He was arrested and detained and charged for the offences arising out of the incident.
- [4] The Court has received and has carefully considered the following reports:

i. Social Inquiry Report

¹ Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2003

² Cap. 96 of the Substantive Laws of Belize (Revised Edition) 2020.

- ii. Antecedent History
- iii. Prison Report
- iv. Victim Impact Statement

[5] The Court further heard an impassioned plea in mitigation from Counsel on behalf of the Prisoner and brief submissions on sentencing were made by Counsel for the Crown.

Prescribed Penalty

[6] The offence of Use of Deadly Means of Harm with Intent to Cause Unlawful Grievous Bodily Harm is contained in **Section 83 (b) of the Criminal Code** and prescribes a maximum sentence of 10 years imprisonment.

[7] This Court has considered the propriety or otherwise of a custodial sentence relative to both offences having regard to the provisions of the **Penal System Reform (Alternative Sentences) Act, (the “PSRAA”)** which states:

“28.-(2) ...the court shall not pass a custodial sentence on the offender unless it is of the opinion,

where the offence is a violent or sexual offence (as defined in section 7 of this Act), that only such a sentence would be adequate to protect the public from serious harm from the offender.

[8] The Court has taken into account the prevalence, gravity and seriousness of this offence. This was a brazen act involving the discharge of an illicit firearm in public at daytime against two police officers in the lawful exercise of their duty. The Court has considered the need to punish the Offender as well as the need to protect the society from serious harm by the Offender. In light of the guidance and the principles of sentencing adumbrated by the CCJ jurisprudence, and the statutory requirement under the PSRAA that the gravity of the punishment must meet the gravity of the offence. The public interest in punishing these types of lawless and dangerous conduct is served by a custodial sentence, and the Court must deter the Convict himself and others from similar acts of defiance against law enforcement. For these

reasons, the Court considers that the imposition of a custodial sentence is appropriate.

- [9] The Court now looks to the guidance of the Apex Court, the Caribbean Court of Justice (the “CCJ”) in the Barbadian case of **Teerath Persaud v R**³ on the issue or the formulation of a just sentence, as highlighted by Anderson JCCJ:

*“[46] Fixing the starting point is not a mathematical exercise; it is rather an exercise aimed at seeking consistency in sentencing and avoidance of the imposition of arbitrary sentences. Arbitrary sentences undermine the integrity of the justice system. In striving for consistency, there is much merit in determining the starting point with reference to the particular offence which is under consideration, bearing in mind the comparison with other types of offending, taking into account the mitigating and aggravating factors that are relevant to the offence but excluding the mitigating and 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 sentence imposed.”*

- [10] 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 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.

³ (2018) 93 WIR 132

⁴ [2022] CCJ 4 (AJ) GY

[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)."

- [11] The Court finds instructive the identification of the aggravating and mitigating factors of both the offending and Offender for this type of offence in the "Compendium Sentencing Guideline of The Eastern Caribbean Supreme Court for Violence Offences" (the "ECSG").
- [12] The approach this Court adopts pursuant to the guidance of **the ECSG** is to assess the starting point for the offences firstly, by a consideration of the consequences of the harm flowing from the offence, and the particular culpability of the Offender. An appropriate range is then identified. Thereafter, the aggravating and mitigating factors are considered and an appropriate starting point is determined within that identified range. Factors relative to the Offender are identified, which may result in an upward or downward adjustment to the starting point or in some cases no adjustment at all. Once that figure is determined the Court will then go on to consider the totality principal, and the usual credits for guilty plea (none in this case) and deductions for any time spent in pre-trial custody.

The Starting Point

- [13]** The Court considers firstly, the harm caused by this offending. To determine the measure of this harm the Court has considered the sentiments of the Virtual Complainants as expressed in their individual impact statements where they have detailed how this incident has affected them. Both Virtual Complainants expressed some measure of trauma flowing from the fear of losing their lives and how that has impacted on the execution of their duties. While Court empathises with the Victims and does not wish to minimise their very valid feelings of trauma, in the absence of physical and evident psychological harm, or any other evidence of long term impact – this Court feels constrained to classify the harm to the Virtual Complainants on the lower end.
- [14]** The Court; however, assessed the seriousness i.e. culpability of the Offender to be high due to the following factors- the offence was committed in public in broad daylight and against members of the protective services, whilst in the lawful execution of their duties. The act was facilitated by the use of a firearm which the Prisoner brandished and discharged indiscriminately in a public setting. The Court also considered that the intention was clearly to cause grievous or serious harm to the Virtual Complainants notwithstanding the fortuitous result that they both escaped injury.
- [15]** The ECSG states that offences falling within a lower consequence category with high degree of culpability should fall within the range of 30- 60 % of the maximum sentence.
- [16]** Having established the range the Court will now determine the exact starting point by reference to the following aggravating and mitigating factors of the offence- taking care not to double count factors already considered:

Aggravating Factors

- Seriousness and prevalence of these types of offences.
- Brazen act committed in public in broad daylight.
- Multiple victims.
- Victims were on duty police officers dressed in police uniform.
- The Prisoner was evading lawful arrest.

Mitigating Factors

- No actual injuries inflicted on the VCs.

[17] Barrow JA in **Criminal Appeal No. 13 of 2009, Yong Sheng Zhang v. The Queen** stated at paragraph 13:

“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.”

[18] The Court has been provided with a list of cases on sentences imposed by First Instance Courts including two decisions of this present Court as constituted for the offence of Use of Deadly Means of Harm with Intent to Cause Grievous Bodily Harm. This Court observes that the range of sentences is quite wide in this jurisdiction ranging from fines to up to 8 years imprisonment on the higher end.

[19] In relation to the two decisions cited by Counsel – **Gerson Guerra** and **Eric Mendez** for which fines were imposed- this Court can easily distinguish same. Both of these cases were the subject of guilty pleas for which a reduction in sentence was awarded, further these cases were the product of plea negotiations between the Crown and the Defendants, with the acquiescence of the respective Virtual Complainants. Both incidents occurred in familial settings in which there was a pre-existing and post- offence relationship between the Parties, which offered some context as to the rationale for the concluded plea agreements. As such, although the offences are the same the factors considered vary greatly from the case at bar.

[20] The Court has also considered the other first instance decisions submitted to it by Counsel on behalf of the Crown. The Court wishes to observe that in the absence of appellate decisions, which have reviewed the suitability or reasonableness of first instance sentences, this guidance, while helpful, cannot be easily applied. This is especially so, since the sentencing methodology applied in each case is not easily identifiable, for example- what were the starting points? Were there any adjustments upward or downward to that starting point for factors relevant to the Offender? In the case of guilty pleas, what was the quantum of the deduction made? How much time had been spent in pre-trial custody, and was that deducted from the final sentence. Therefore the Court approaches these cases with a certain level of cautious scrutiny bearing in mind these identified challenges.

[21] The Court did have regard to the First instance judgment of **The King v Carl Lino**⁵, a judgment of my brother Mr. Justice Nigel Pilgrim. The Court was able to follow the reasoning of that Court as the sentencing methodology was easily identifiable via the Written Judgment. In that case, the Prisoner fired three shots while the VC was talking to someone at North Front Street, Belize City. The VC discovered he was shot to the right lower side of the back of his head. Two police officers in close proximity pursued the Prisoner who took out a firearm. Consequently, the officers fired shots at him. The officers eventually apprehended the Prisoner and retrieved his firearm. The Prisoner was shot in the pursuit. Similar to this case, the consequences of harm was considered on the lower scale as there was no long term lasting injury while the culpability of the Offender, or seriousness of the offence was ranked as high for the similar reason that the Prisoner had intended more serious harm to the police officer and Virtual Complainant than had actually been inflicted. The Court, in that case also considered as an aggravating feature of the offence that it was committed in broad daylight and that the Virtual Complainant had in fact been struck in the head. In those circumstances, the Court started with a sentence of 6.5 years before moving on to the factors relative to the Offender.

⁵ C81 of 2016

[22] After considering the above principles and the facts of this case, and also having regard to sentences imposed for similarly circumstanced offences, this Court would choose a starting point of 60% of the maximum penalty of ten (10) years. The Court; therefore, sets the starting point at six (6) years.

Factors Affecting the Offender

[23] The Prisoner has no convictions; however, he has some outstanding pending matters before the Courts including a recent pending charge for Murder. This was the subject of ripe discussion during the sentencing hearing as Counsel for the Prisoner emphasised that the Court ought not to take into account those charges, which have not yet been the subject of adjudication citing of course the presumption of innocence. The Crown, while not disagreeing with Defence Counsel's contention, has submitted that the pending charges do offer some measure of consideration in so far as the Prisoner's prospects for rehabilitation are concerned and the likely danger to the public.

[24] The Court wishes to make clear that the fact that the Prisoner has pending charges has not aggravated the Prisoner's sentence as the Court draws no inference of guilt relative to unproven allegations. The Court emphasises that sentences should be grounded on proven facts and established evidence, rather than on assumptions and as such it is important that pending charges should be treated cautiously.⁶

[25] The fact that the Prisoner has several pending charges before the Court were considered only for the limited impact it had on the Court's overall impression of the Prisoner's character juxtaposed against the sworn evidence from the Prisoner's character witnesses specifically, his mother Jaqueline Franklin's claim that he has not been someone in trouble with the law.

⁶ Attorney General v Jeffrey Joseph and Lennox Ricardo Boyce [2006] CCJ 3 (AJ)

[26] The following factors have been considered relative to the Offender:

Aggravating factors

- None

Mitigating factors

- Close relatives financially dependent on him as evident in Social Inquiry Report.
- No convictions or prison infractions.

[27] To the starting points outlined above the Court makes a downward adjustment of **eighteen months (18)** after taking into consideration the mitigating factors of the Offender.

[28] No issue of guilty plea arises so, the Court moves on to the next step.

Totality Principle

[29] The Court gave due consideration to the totality principle outlined by the CCJ in **Linton Pompey v DPP**⁷ as the Prisoner is being sentenced for two offences, per Saunders PCCJ:

“[33] So far as the totality principle is concerned, in cases where it is necessary to sentence someone for multiple serious offences, before pronouncing sentence the judge should:

(a) Consider what is an appropriate sentence for each individual offence;

(b) Ask oneself whether, if such sentences are served concurrently, the total length of time the prisoner will serve appropriately reflects the full seriousness of his overall criminality;

(c) If the answer to (b) above is Yes, then the sentences should be made to run concurrently. If the answer is No and it is felt that justice requires a longer period of incarceration so that the

⁷ [2020] CCJ 7 (AJ) GY.

sentences should run consecutively, test the overall sentence against the requirement that it be just and proportionate;”

[30] The Court answers the question under (b) as yes – and therefore orders that the sentences should be made to run concurrently so, that the overall sentences are just and appropriate.

Time Spent in Custody

[31] In Romeo da Costa Hall v The Queen⁸ the CCJ highlighted the importance of awarding full credit for the time spent in pre-trial custody. However, the Apex Court also noted that there is a residual discretion in the sentencing judge not to apply that primary rule for example, where the Defendant was on remand for some other offence unconnected with the one for which he was being sentenced.⁹ In that case, the Court identified some of the factors that would displace the prima facie rule of full credit for time served in pre-sentence custody.

[32] The Convict in this case had been arrested for these offences on 2nd March 2020 and had been released from Prison on 6th March when he was granted bail. He was again arrested on March 23 2020 on unrelated charges under the State of Emergency and released on April 16, 2020. On August 29th 2023, he was again arrested on unrelated charges and has been in custody from that date to present. Had he not been rearrested, he would’ve continued to be on bail relative to these offences for which he is now being sentenced. The Court; therefore, will not count his period of incarceration relative to those unrelated charges. In relation to these offences, the Convict has spent 5 days in pre-trial custody for which will be awarded full credit.

⁸ [2011] CCJ 6 (AJ)

⁹ Callachand v The State [2008] UKPC 49 followed.

Disposition

[33] The sentence of the Court is as follows:

- v. The Prisoner is sentenced to four (4) years, five (5) months and 25 days for the offence of Use of Deadly Means of Harm with Intent to Cause Grievous Bodily Harm to Stephen Choco contrary to **Section 83 (b) of the Criminal Code.**
- vi. The Prisoner is sentenced to four (4) years, five (5) months and 25 days for the offence of Use of Deadly Means of Harm with Intent to Cause Grievous Bodily Harm to Joseph Sutherland contrary to **Section 83 (b) of the Criminal Code.**

The sentences are to run concurrently and with effect from the date of oral verdict i.e. 22nd day of July, 2024.

Candace Nanton

High Court Judge

Senior Courts Belize

Dated: 28th October, 2024