

**IN THE SENIOR COURTS OF BELIZE
CENTRAL SESSION-BELIZE DISTRICT**

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO: C 3/2024

BETWEEN

THE KING

And

EARL BAPTIST

Accused

Appearances:

Ms. Shanell Fernandez Counsel for the Crown.

Mr. Leeroy Banner Counsel for the Accused.

2024: July 15th & 24th

September 23rd & 30th

October 1st

**JUDGMENT
MURDER- SENTENCING**

[1] **SYLVESTER; J:** Earl Baptiste (hereinafter referred to as “the accused”) was indicted for the offence of murder, contrary to section 117 read along with section

106(1) of the **Criminal Code**¹, (hereinafter “the Code”). The particulars of the offence states, that on the 21st January 2022, at Burrell Boom Village, in the Belize District, in the Central District of the High Court murdered Leslie Gillett (hereinafter referred to as the deceased).

- [2] On the 27th June 2024 the accused was convicted for the murder of Leslie Gillett, after a Judge alone trial before this Court.

Legal Analysis

- [3] Pursuant to the Belize Criminal Code Chapter 101, section 106, therein provides the maximum penalty for the offence of murder as follows:

“106.-(1) Subject to sub-section (2), a person who commits murder shall be liable, having regard to the circumstances of the case, to–

(a) suffer death; or

(b) imprisonment for life. ...

(3) Where a court sentences a person to imprisonment for life in accordance with sub-section (1), the court shall specify a minimum term, which the offender shall serve before he can become eligible to be released on parole in accordance with the statutory provisions for parole.

(4) In determining the appropriate minimum term under sub-section

(3), the court shall have regard to–

(a) the circumstances of the offender and the offence;

(b) any aggravating or mitigating factors of the case;

(c) any period that the offender has spent on remand awaiting trial;

(d) any relevant sentencing guidelines issued by the Chief Justice;

and

(e) any other factor that the court considers to be relevant.”

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

[4] In the matter of **August et al v R**² the Caribbean Court of Justice examined section 106 of the Criminal Code of Belize, stating that any life sentence post a conviction for murder is discretionary and not mandatory and the section allows for the imposition of a minimum term to be imposed prior to being eligible for release on parole. President of the CCJ Byron PCCJ and Rajnauth-Lee JCCJ opined as follows:

“[82] We have concluded that under the amended s 106, where a person is convicted of murder, that person can be sentenced to death or to a maximum term of imprisonment for life. Accordingly, any life sentence imposed following a conviction for the offence of murder will be discretionary and not mandatory. Wherever on the scale the term is fixed, the term of imprisonment must necessarily be such that it is befitting of the circumstances of the offence and the offender.

[83] Whereas term of life imprisonment is imposed by the sentencing judge, the judicial tailoring function is preserved by sub-ss (3) and (4) which allow for the prescription of a minimum term that must be served by the offender before being eligible for release on parole. In individualizing that minimum period, the judge’s exercise of his or her sentencing discretion is guided by the consideration of the key factors set out in sub-s (4).”

[5] The Court of Appeal of Belize in **Michael Faux et al v R**³ has provided guidance on the imposition of the sentences of either life imprisonment or fixed-term sentences which is in the discretion of the Judge after taking into consideration the varying individualized circumstances. Hafiz Bertram, JA expounded as follows:

“(15) ...The statistics show the sentencing trend for murder is life

² 2018] 3 LRC 552.

imprisonment with a minimum term before being eligible for release on parole. The table also shows a few instances of the imposition of a fixed term sentence.... The Court notes that these fixed-term sentences have only been imposed where there have been mitigating circumstances warranting a lesser sentence. It is at the discretion of the trial judge to determine whether to impose a sentence of life imprisonment or a fixed-term sentence upon a conviction of murder.

(16) For a conviction of murder, a custodial sentence is warranted as shown by the imposition of past sentences. The sentencing trend for murder since the amended section 106 and the case of August has been the imposition of a life sentence with a minimum term of 25 – 37 years after which the convicted person becomes eligible to be released on parole.

(17) Where a sentence of fixed-term is imposed, the range is 25 – 35 years unless there are circumstances, when individualizing a sentence, which warrants a lesser sentence.”

[6] In the authority of Teerath Persaud v R⁴ the CCJ provides guidance as to how the starting point should be determined, taking into consideration the aggravating and mitigating factors of the offence and excluding the same factors relevant to the offender. The formulation of a just sentence, was elucidated by Anderson JCCJ as follows:

“[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,

⁴ (2018) 93 WIR 132.

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.”

- [7] The CCJ in **Calvin Ramcharran v DPP**⁵ enunciated that sentencing courts should be wary of importing sentencing outcomes from other jurisdictions as sentencing is contextual, geographic and pragmatic. Further, the task of sentencing should have retributive, public interest, rehabilitative and preventative considerations. Barrow JCCJ explained the position as follows:

“[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.

⁵ [2022] CCJ 4

[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).”

Factual Basis of Sentence

- [8] The evidence was that the accused and another assailant, both armed with a firearm, attended at the deceased's shop, pretending to purchase items through a wired mesh. While the deceased was handing the items to the accused, the accused and the other assailant, opened fire on the deceased killing him instantly. That Sgt. Fuller was able to identify the accused based on him having had numerous dealings with the accused on prior occasions, despite the accused in the CCTV recording was wearing a COVID 19 mask, and a black stocking overing his head. All the other features of the accused were properly identified by Sgt. Fuller, the accused's distinguishing eyes, parts of his head, face and gait.
- [9] The accused to date has not accepted responsibility for the murder and led an alibi defence that was negatived by the prosecution beyond a reasonable doubt. When the police arrived, the deceased was dead. The police found a firearm tucked in his pants waist upon a search of his person.

[10] The Court accepts that the age of the accused is a prime factor that the court must take into consideration, when examining the rehabilitative aspect of sentencing for the offender. This court notes that many serious crimes in Belize are conducted by very young men, and in this case the court had the opportunity to examine the accused over the days of the trial, and also place tremendous emphasis and examined inadeptly all the reports placed before the court. This court is convinced that the accused can be rehabilitated, and in the exercise of the court's jurisdiction in sentencing, this shall be taken into consideration. The punitive, retributive and deterrent factors shall also be taken into consideration in this exercise.

[11] The accused was born on the 3rd April 2001, and was twenty (20) years old at the time of the offence.

Constructing the Sentence

[12] This Court is guided by the principles elucidated in the decision of **Aguillera et al v The State**⁶ in listing the aggravating and mitigating factors in the context of the offence, in order to determine the starting point of sentencing. The court begins by considering the aggravating and mitigating features of the offending. They are as follows:

- i. The offence was unprovoked and premeditated.
- ii. The offence involved the use of a firearm, which is a prevalent societal menace, and further many offences are committed with firearms.
- iii. This is one of the most serious and prevalent offences in Belize.

[13] The Court found no mitigating features of the offending.

[14] This court is guided by the factors the court must consider; the rehabilitation of the

⁶ 89 WIR 451 at para 19.

offender coupled with the other factors in sentencing namely, retribution, deterrence and the public interest, which was alluded to in the CCJ authority of **Renaldo Alleyne V Queen**⁷.

[15] This Court notes that the accused has not accepted responsibility, however having regard to his youthful age at the time of the commission of this offence, he is a worthy candidate to be considered for rehabilitation. In relation to the other factors of deterrence, retribution and the public interest, this court has to show its abhorrence for such acts of lawlessness, which must be thwarted if the Belizean citizens have to live in an atmosphere of peace and tranquility.

[16] There are two decisions emanating from the Privy Council, namely **White v R**⁸ and **R v. Trimmingham**⁹, wherein the court instructed that the death penalty is only appropriate in cases that were, “the worst of the worst” or “the rarest of the rare”; and that there must be no reasonable prospect for the offender’s reform. Further, that if the object of punishment could not be achieved by any means other than the ultimate sentence of death, then it should be imposed.

[17] This case does not qualify as the “rarest of the rare” or “the worst of the worst” pursuant to the Privy Council authorities abovementioned. The court is of the view that a fixed-term sentence is appropriate in these circumstances.

Starting Point

[18] The Court considers as an appropriate starting point for the accused is twenty-five (25) years imprisonment. I have taken into consideration the youthful age of the offender and the heinous act he has committed.

⁷ [2019] CCJ 6 par. 40-68

⁸ 77 WIR 165 at para 12-14.

⁹ [2009] UKPC 25

- [19] The youthful age of the offender and the possibility of rehabilitation has caused this court to impose a fixed-term sentence. This was a heinous public execution which demonstrated complete disregard for human life, law and order.
- [20] The Court will now individualize the sentence by considering the mitigating and aggravating factors in relation to the offender.
- [21] The Court would first deal with the aggravating factors of the offender thereafter the mitigating.
- [23] The aggravating factors relevant to the offender, the court found the following:
- i. The accused's prior convictions for violence including aggravated assault and aggravated burglary.
 - ii. The unprovoked attack on the deceased.
- [22] This would cause the court to increase the minimum term by two (2) years to twenty-seven years (27) imprisonment.
- [23] In relation to the mitigating factors of the offender, in the Social Inquiry Report (SIR) the accused stated he attended numerous rehabilitation programs while at the prison, including his receipt of a certificate in "Gang Education, Drug & Alcohol Preventative Treatment Therapy and Cognitive Development Treatment Programs" from October 2023 to February 2024. This was confirmed from the report of the prison dated 16th July 2024 signed by Mr. Jarette Twist. The accused seems to be on a path to rehabilitation as confirmed in the SIR report. In the context of this prisoner and taking into consideration his youthful age, rehabilitation is pivotal.
- [24] This Court is guided by the decision in the Caribbean Court of Justice, our Apex Court in the matter of **Renaldo Alleyne v Queen [2019] CCJ 6** [par. 40 – 68], which states that the sentencer must consider the rehabilitation of the offender when

sentencing, this in no way minimizes the importance and relevance to this case of the other factors namely; punitive, retribution and prevention. The relevant paragraph of Alleyne's case speaks to the importance of rehabilitation and states as follows:

Rehabilitation:

(65) "This Court has emphasized its unhesitating acceptance that the rehabilitation of the offender is a factor that must be considered by the sentencing judge in fashioning the appropriate sentence and that it will be for others in the criminal justice system to ascertain when rehabilitation has been accomplished.....".

- [25] The Psychiatric Report of Dr. Alejandro Matus Torres states, the accused was found to have no psychiatric issues nor a history of mental illness.
- [26] In relation to the mitigating factors of the offender the court will reduce the sentence by two years, from twenty-seven (27) years to twenty-five (25) years imprisonment.
- [27] Pursuant to **R v DaCosta Hall**¹⁰ the Court would order the time spent on remand to be deducted from the final sentence.

¹⁰ [2011] CCJ 6

Order

[28] The Court sentences the prisoner as follows:

- i. To a term of twenty-five (25) years imprisonment.
- ii. The time spent on remand must be deducted from the sentence of twenty-five (25) years.

Derick F. Sylvester

High Court Judge

Dated 30th September 2024