

IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

INDICTMENT NO: C 003/2022

BETWEEN

THE KING

and

RODMAN WELCH

Prisoner

Appearances:

Ms. Riis Cattouse, Crown Counsel for the Crown.

Mr. Hubert Elrington S.C. and Mr. Orson J. Elrington for the Prisoner.

2023: October 2nd, 5, 10, 12, 17 and 30th

November 2nd, 9, 14, and 16th

December 1st

2024: January 25th

March 26th

May 1st and 6th

JUDGMENT

MURDER- SENTENCING

[1] **PILGRIM, J:** Rodman Welch (“the prisoner”) 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”) arising out of the shooting death of Shakeem Felipe Dennison (“the deceased”) on 12th October 2020. After trial before this Court by judge alone he was convicted of murder on 25th January 2024.

The Legal Framework

[2] The sentencing regime for murder is set out at section 106 of the Code which provides, where relevant:

“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.” (emphasis added)*

[3] The CCJ in **August et al v R**² considered section 106 of the Code, per Byron PCCJ and Rajnauth-Lee JCCJ:

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

² [2018] 3 LRC 552.

“[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] Where a 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).” (emphasis added).

[4] The Privy Council has opined in the Belizean case of **White v R**³ 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 of reform of the offender and that the object of punishment could not be achieved by any means other than the ultimate sentence of death.” There are also procedural requirements for the imposition of the death penalty set out in **R v Reyes**⁴.

[5] The Court of Appeal has comprehensively considered sentencing for murder in Belize in **Michael Faux et al v R**⁵ and made the following observations, per Hafiz Bertram P:

“[15] ...The statistics show the sentencing trend for murder is life imprisonment with a minimum term before being eligible for release on parole. The table also shows a few instances of the imposition of a fixed term sentence. ...The Court notes that these fixed term 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

³ 77 WIR 165 at para 12-14.

⁴ [2003] 2 LRC 688.

⁵ Criminal Appeal Nos. 24-26 Of 2019.

determine whether to impose a sentence of life imprisonment or a fixed term sentence upon a conviction of murder.

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

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

[6] The Court considers the guidance of the CCJ in the Barbadian case of **Teerath Persaud v R**⁶ on the issue of the formulation of a just sentence, per Anderson JCCJ:

“[46] Fixing the starting point is not a mathematical exercise; it is rather an exercise aimed at seeking consistency in sentencing and avoidance of the imposition of arbitrary sentences. Arbitrary sentences undermine the integrity of the justice system. In striving for consistency, there is much merit in determining the starting point with reference to the particular offence which is under consideration, bearing in mind the comparison with other types of offending, taking into account the mitigating and aggravating factors that are relevant to the offence but excluding the mitigating and aggravating factors that relate to the offender. Instead of considering all possible aggravating and mitigating factors only those concerned with the objective seriousness and characteristics of the offence are factored into calculating the starting point. Once the starting point has been so 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

⁶ (2018) 93 WIR 132.

v da Costa Hall full credit for the period spent in pre-trial custody is then to be made and the resulting sentence imposed.” (emphasis added)

[7] The Court is also guided by the decision of the CCJ in **Calvin Ramcharran v DPP**⁷ on this issue, per Barrow JCCJ:

“[15] In affirming the deference an appellate court must give to sentencing judges, Jamadar JCCJ observed that **sentencing is quintessentially contextual, geographic, cultural, empirical, and pragmatic. Caribbean courts should therefore be wary about importing sentencing outcomes from other jurisdictions whose socio-legal and penal systems and cultures are quite distinct and differently developed and organised from those in the Caribbean.**

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

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

Factual basis of sentence

[8] On 12th October 2020 after 4 p.m. at the Yarborough Green Basketball Court Jarvis Usher was with the deceased playing one and one basketball. Usher went to get the ball when it went out of bounds and observed an unknown dark skinned male person.

⁷ [2022] CCJ 4 (AJ) GY.

[9] He observed the unknown male person pulled out what appeared to be a black in colour firearm and pointed it in the direction of the deceased who stood about ten feet away. The unknown male person shot the deceased three times after which he, the deceased, then fell to the ground. The unknown male person then placed the firearm back into his pants pocket and walked towards where he had parked his black in colour Meilun motorcycle by the front of the Yarborough Green Court sign on the outside of the fence. The shooter then rode off in the direction of Yarborough Bridge. The entire incident took about 1 minute.

[10] Usher then ran towards the direction of where the deceased had fallen to render assistance to him. Usher observed that the deceased had what appeared to be a gunshot injury to the right side of his neck and he also had what appeared to be a gunshot injury to one of his calves. The police came sometime later, and the deceased was taken to hospital. The deceased said to his friend, Usher, on the way to the hospital, "I no wa dead so" and then he began to gasp for air. The deceased was pronounced dead at 5:14 p.m. that afternoon.

[11] Dr. Estrada Bran testified that the deceased died from bronchial aspiration, meaning simply that he choked to death on his own blood, due to multiple gunshot wounds to the shoulder and neck. There were four entry wounds, the last a re-entry. These were to the outer area of the left shoulder, right posterior area of the leg, another located below that area, and the left anterior lateral area of the neck.

[12] The prisoner was later arrested as a suspect in this investigation. On 15th October 2020 the prisoner gave a videorecorded statement under caution to Sergeant Elroy Vernon. In the caution statement the prisoner stated that three weeks after he got a job at Excelsior High School he was shot in his head by "the young man Phillip and two others". The Court found that the reference to Phillip was a reference to the deceased on all of the evidence. He said that he feared for his life and consequently he told no one of the identity of his assailants. He noted however that, "recently same young man always hailing me like it's okay, playing like he like me and he know what he did to me" and, "Recently they started to stone my nephew and niece whenever they past Fabers Road going home." The prisoner gave this account of his activities on the day of the shooting in the video recording of the caution statement:

“Early in the morning Monday, Phillip and Roy chase me again so in the evening I saw him passing me and screw at me again so I don't know what to do so I defend myself because I don't want to lose my life. I fear him whenever I see him because I knew he was the guy that shot me so I went and I defend myself. I didn't mean to do what I do but I do it under self-defense fearing my life.

...

Q: What do you mean by saying he "screw" at you?

A: Make up his face and watch you in a way like they want do you something.

...

Q: What do you mean by saying you used self-defense?

A: I just gaun and did him back the same thing he did me in self-defense.”

[13]The Court rejected the claim of self-defence and provocation but accepted the admission of the prisoner that he shot and killed the deceased.

[14]The prisoner was 34 years old at the time of the offence.

Constructing the sentence

[15]The Trinidadian Court of Appeal decision of **Aguillera et al v The State**⁸ is helpful in listing the aggravating and mitigating factors in the context of murder. The Court begins by considering the aggravating features of the offending. Those are, in the Court's mind, as follows:

- i. There was a substantial degree of premeditation or planning: The evidence which this Court accepted is that motivated by the history between the parties the prisoner left where he was rode on his motorcycle up to the basketball court and shot the deceased to death. This offence did not occur on the spur of the moment and by the caution statement it seemed to have been gestating for some time in the mind of the prisoner.
- ii. The offence involved the use of a firearm: The Court's sentence would need to demonstrate the Belizean society's abhorrence of gun related crime and need to deter person's from engaging in gun violence which is gravely affecting the nation's sense of security.

⁸ 89 WIR 451 at para 19.

- iii. The offence was committed in full view of the public: The Court found that the prisoner committed a public execution of the deceased in broad daylight in a busy area, a community basketball court which would have caused trauma to bystanders like Jarvis Usher who watched his friend die.
- iv. This is a serious and prevalent offence: Ms. Alisha Sheran, the sister of the deceased, described her brother as emotionally supportive and a light to his family that was taken away from them by the selfish actions of the prisoner. She further stated:

"I miss my brother so much that at times I become very sad knowing that I will never see him again or be able to talk to him and tell him about something that is bothering me because his life was taken away by someone that didn't think about the hurt his loved ones would go through."

[16] The Court found as a mitigating feature of this offending, that while there was not provocation in the legal sense of a defence to the charge of murder, there was provoking conduct in the history between the prisoner and the deceased, in particular, the shooting at the school.

[17] The Court cannot impose the death sentence as this case does not qualify as the "rarest of the rare" or "the worst of the worst" under the authority of *White*. The Court considers as an appropriate starting point for the sentence of prisoner a life sentence with a minimum term of 28 years imprisonment. There are no mitigating circumstances justifying a fixed term sentence. This was a heinous murder, a public execution which demonstrated complete disregard for human life, law and order. To not seriously punish this offence is to give the Court's approval to wanton lawlessness. The facts are similar to *Faux*, namely a teenager convicted of a shooting amongst a crowd and the Court of Appeal held that the appropriate fixed sentence range was between 25-35 years, with a starting point of 29 years.

[18] The Court will now individualize the sentence by considering the mitigating and aggravating factors in relation to the offender.

[19] The aggravating factors relevant to the offender, in the Court's view, are as follows:

- i. The prisoner's maturity: The prisoner was 34 years old and would be expected to show more restraint and make better decisions.

- ii. Previous convictions and prison infractions: The prisoner has 3 previous convictions including 2 for damage to property and 1 for harm spanning the period 2007 to 2020. The last being less than 2 months before this offence. The prisoner has committed 4 prison infractions between 2021 to 2023 This may be a signal that he may not be serious about rehabilitating.

[20] This would cause the Court to uplift the minimum term by 3 years to 31 years imprisonment.

[21] The mitigating factor relevant to the offender is as follows:

- i. A positive Social Inquiry report (SIR) and completion of rehabilitation programs: The prisoner was examined by Dr. Alejandro Matus Torres and found to have no psychiatric issues nor a history of mental illness. The SIR speaks to him being a devoted father to his children and a loving son to his mother. He is described as hardworking, financially supportive, and was able to avoid gang life growing up poor in Southside Belize City. He enrolled in programs to gain marketable skills which is to be commended. The prison report demonstrates that he completed a 4-month rehabilitation program and for that he must also be given credit.

[22] This personal mitigation would lead the Court to reduce the minimum term of imprisonment by 2 years to lead to a final sentence of life imprisonment with a minimum term of 29 years imprisonment.

[23] Pursuant to the Court's powers under section 162 of the IPA as considered in R v Pedro Moran⁹ the Court would order the sentence to run from 16th October 2020.

Disposition

[24] The Court sentences the prisoner to life imprisonment and is to serve a term of 29 years imprisonment before becoming eligible for parole. The sentence is to run from 16th October 2020.

Nigel Pilgrim
High Court Judge
Dated 6th May 2024

⁹ Criminal Application No. 1 of 2017 at para. 38.