

**IN THE SENIOR COURTS OF BELIZE**

**CENTRAL SESSION- BELMOPAN**

**IN THE HIGH COURT OF JUSTICE  
(CRIMINAL DIVISION)**

**INDICTMENT NO. CR20230079C**

**BETWEEN:**

**THE KING**

**and**

**JOHN AUGUST**

**Before:**

The Honourable Madame Natalie -Creary Dixon, J

**Appearances:**

Mr. Glenfield Dennison, for the Crown

Ms Rachel Montejo, for the Accused

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2024: January 30, 2024  
February 19, & 22, 2024  
March 5, & 26, 2024  
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**JUDGMENT ON SENTENCING**

**[1]** **NATALIE -CREARY DIXON, J:** On February 22, 2024, Mr. John August (hereinafter “the convicted man”) entered a plea of guilty to the offence of causing death by careless conduct pursuant to Section 108(2) of the Belize Criminal Code Section 108(2), Belize Criminal Code, Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2020 (“Criminal Code”), in that he caused the death of Daniel Gangora by his careless use of his motor vehicle on November 30, 2020.

**[2]** In arriving at the appropriate sentence, the Court considered the following:

1. The summary of agreed facts;
2. The victim impact statement;
3. The Aggravating and Mitigating Circumstances of this case;
4. The Law; and
5. Decided cases on the matter at hand

### **SUMMARY OF AGREED FACTS**

**[3]** The agreed facts are that on November 30, 2020, sometime after 11 am, John August was driving a motor vehicle heading from the direction of San Ignacio towards Belmopan City when he hit Daniel Gongora (the deceased) who was attempting to cross the George Price Highway. As a result of the impact of the collision, Mr. Gongora sustained multiple injuries and died on December 2, 2020. His death was certified to be multiple blunt force traumatic injuries due to or as a consequence of being hit by a motor vehicle.

No ethanol or drugs of abuse were detected in Mr John August’s urine specimen.

### **VICTIM IMPACT STATEMENTS**

**[4]** Ms. Josephine Gongora, daughter of the deceased, expressed the pain and trauma of losing her father. Since the incident, she has had several

nervous breakdowns and becomes very depressed at times. She has been mentally, physically and financially affected. She can no longer operate her family business which is her only source of income, as she is no longer emotionally stable enough to do so.

**[5]** Yet another daughter of the deceased, Ms. Amanda Torres described the loving relationship she had with her father. She recounted how she would travel from San Ignacio quite often to care for her dad and stepmother. Her father was her support system; on his passing, she had to assume the duties of full-time caregiver to care for her stepmother, which affected her financially.

**[6]** Mr. August's character witness Mr. Bernz Salazar, a senior Justice of the Peace asked for leniency on behalf of the convicted. He outlined that he has known Mr. August for 14 years, as a four-time former Mayor and as a former employee of the San Ignacio and Santa Elena Town Council under the leadership of Mr. August. He has been successful in the areas of tourism and sponsors and encourages the youth in various sporting activities. He described him as a dependable, calm and assertive has been a respectable member of his community.

**[7]** Mr. August gave a statement in which he outlined that he reported the matter to his insurance and accepted civil liability and assisted by paying out of his own pocket a payment of \$300 which was paid out to Mrs. Diana Smith on December 1, 2020. He also paid \$800 for funeral expenses to Mr. David Cunningham, son of the deceased.

**[8]** A payment of four thousand seven hundred and fourteen dollars (\$4,714) was made to the law firm of Barrow and Company on behalf of Josephine Gongora, the Intended Administratrix of the estate of Daniel Gongora to cover medical expenses and others.

**[9]** The insurance company also paid out four thousand five hundred dollars(\$4,500) to the estate of Daisy Watson, the wife of the deceased.

There are no minor children.

### **MITIGATING AND AGGRAVATING FACTORS**

The Court then assessed the mitigating and aggravating factors in this case.

#### **Mitigating Factors:**

A mitigating factor relative to the offence is the fact that the convicted man did not intend to kill anyone.

The mitigating features of this case, relative to the convicted man, are that the convicted pleaded guilty at an early stage, thus saving the court time and valuable resources; a guilty plea also meant that the family of the deceased would not have to re-live the horrors and pain of that fateful night, giving evidence at a trial. Additionally, he has no prior convictions of this nature and has shown genuine remorse. A major mitigating factor is that the convicted man compensated the victim's family in full before the start of this trial.

#### **Aggravating Factors**

It is a major aggravating factor that the offence of causing death by careless conduct is a serious offence which permanently deprives the victims of their loved ones, many times causing financial and emotional hardship after the death of loved ones.

**[10]** It is also an aggravating factor of the offence that the offence is prevalent in Belize.

### **THE LAW**

**[11]** The offence of Causing Death by Careless Conduct is outlined in Section 108(2) of the Code. According to Section 108(2) of the Code

*“(2) Every person who causes the death of another by any careless conduct not amounting to negligence, as defined in this Code, commits an offence and is liable to imprisonment for two years.”*

It is left to the Court now, to determine an informed and just sentence in this matter. This determination requires the Court to consider the appropriateness of imposing a custodial sentence or dealing with the matter otherwise, according to the features of this case.<sup>1</sup> The Court was assisted in this determination by considering local Court of Appeal cases on this matter.

### **DECIDED CASES ON THE MATTER**

**[12]** The Court considered our local Court of Appeal cases of **Michel Espat v R<sup>2</sup>, Cardinal Smith v The Queen<sup>3</sup>, DPP v Gonzalez<sup>4</sup> and Victor Cuevas v The Queen<sup>5</sup>**

In the case of **Michel Espat**, a term of nine months imprisonment was imposed. However, it was noted that the accused pleaded guilty to the more serious offence of manslaughter by negligence.

**[13]** It is also worth mentioning that **Espat** can be distinguished from the present case in that there was an obvious aggravating factor of speeding. In **Cuevas**, there was an obvious disregard for other users of the road and what was termed “appallingly bad driving”. In **Cardinal**, the proportions of alcohol found in the accused man’s blood and urine samples were above the legally prescribed limits. These aggravating factors of speeding and alcohol use were not present in Mr. August’s case.

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<sup>1</sup> According to Section 164 of the Indictable Procedure Act: “Upon the conviction of any person for a crime not punishable with death the court may, unless in any particular case it is by law otherwise provided, fine the offender in lieu of or in addition to dealing with him in any other manner in which the court has power to deal with him.

<sup>2</sup> Criminal Appeal no.8 of 1993

<sup>3</sup> Criminal appeal no. 35 of 2005

<sup>4</sup> Cr. Application for Leave to Appeal no. 2 of 2015

<sup>5</sup> Cr. Application for Leave to Appeal no. 17 of 2007

The case of Cardinal Smith is helpful in addressing the question of whether a custodial sentence should be imposed. Mr. Smith was spared a custodial sentence, because of the mitigating factors present in that case, such as the fact that he was an upstanding citizen with no previous criminal history; he was described as a hard worker; his alcohol level was only slightly over the limit and there was no indication that the alcohol level caused the accident.

This Court also considered the mitigating factors of this matter and decided against imposing a custodial sentence. The Court is of the view that a fine is more appropriate than a custodial sentence because the mitigating factors in this case outweigh the aggravating factors.

Section 164 of the Indictable Procedure Act confers a discretion to fine an offender in lieu of any other manner in which the Court has power to deal with him.<sup>6</sup>

**[14]** The case of Victor Cuevas v The Queen<sup>7</sup> is also instructive in determining whether a custodial sentence should be imposed. The respondent in that case was given a one-year sentence for “appallingly bad driving”:

*“For the reasons he chose not to provide to the court below, he made, on his own showing, three attempts, in what can only have been fairly quick succession, to overtake a slow-moving vehicle on a Friday night when the traffic on the road, a major highway, was unsurprisingly hectic. He was plainly “tailgating” the vehicle in front of him at the time and, as a result, found himself in position, when that other vehicle braked, to take the crucial precaution of making sure that the road ahead was clear for a sufficient distance to enable him to overtake and get back to his proper side before meeting traffic coming from the opposite direction. Driving of this kind demonstrates to the Court a selfish disregard for the safety of*

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<sup>6</sup> 164. Upon the conviction of any person for a crime not punishable with death the court may, unless in any particular case it is by law otherwise provided, fine the offender in lieu of or in addition to dealing with him in any other manner in which the court has power to deal with him.

<sup>7</sup> Cr. Application for Leave to Appeal no. 17 of 2007

*other road users. Giving due consideration to the applicant's version of events, as well as to all mitigating factors, and disregard the results of the blood alcohol test, this Court came to the firm conclusion that a prison sentence of one year is entirely appropriate in this case and that the sentence of the convicting court is in all other respects condign".*

**[15]** Mr. August did not act in this fashion. There is no evidence that his conduct before and after the accident was as reprehensible as that of Mr Cuevas. In the circumstances, a custodial sentence will not be imposed.

**[16]** The Court was further assisted in arriving at an appropriate sentence by other decided authorities on this issue. These authorities outlined the general sentencing options exercised by the crown in these types of matters. In assessing the authorities on this type of matter, Justice Lamb in **R v Earl Armstrong Indictment No. N9/2022** observed that the sentencing options exercised by the Courts in these types of matters were as follows<sup>8</sup>:

a) *A maximum term of imprisonment of two years;*

b) a fine;

c) compensation to the family of the deceased; and

d) disqualification of driving licences.

**[17]** Each of the above sentencing options will be applied to the facts of this case, to arrive at an appropriate sentence.

**a) A maximum term of imprisonment of two years**

**[18]** The case of **Michel Espat** stated that the maximum term of imprisonment that can be imposed is "clearly intended for the worst possible case". In that case, the accused pleaded guilty to manslaughter by negligence.

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<sup>8</sup> Para 5

There was evidence that the accused was travelling at an excessive speed, lost control of the vehicle, and four persons were killed. As a result, a sentence of nine (9) months imprisonment was deemed appropriate. That case also referenced the case of Rafael Guerra v R decided on June 18, 1991. In that matter, the negligence was also excessive speed; one person was killed, and the accused did not stop. He also pleaded not guilty and was found guilty after a trial. It was felt that a term of imprisonment of eighteen months was appropriate.

**[19]** This Court did not consider the present case to be amongst the worst of the worst; nor did it consider that the convicted man's behaviour was akin to the accused persons in the cases of Espat and Guerra.

**(b) A Fine**

**[20]** Depending on the circumstances, decided cases have imposed fines in the range of \$2,000.00 to \$9,000.00, with the quantum typically being in the range of \$2,500.00 and \$4,500.00 in incidents involving a single death. In this case, the Court sees no reason to depart from the typical range and therefore believes that a sum of three thousand five hundred dollars is a reasonable fine.

**c) Compensation to the family of the deceased**

**[21]** Justice Lamb in the case of Earl Armstrong noted that *"compensation under Section 108(2) of the Criminal Code does not seek to place a monetary value on human life. Instead, the quantum of compensation, when awarded at all under this provision, reflects considerations such as any payments previously made by the Accused to the deceased's family, prior or anticipated future insurance payments to the deceased's family, pending civil claims, and the financial means of the Accused."*



**[22]** As it relates to the issue of compensation, the Court considered the case of R. v. Ismael Garcia C28/2018 where no compensation was awarded following substantial insurance pay-out and the accused's previous assistance to the deceased family with funeral expenses and having built a house for the mother of the deceased.<sup>9</sup> Mr August's case is similar as the family of the victim has been substantially and fully compensated. In the circumstances, it is felt that no compensation should be awarded in this case.

**d) Disqualification of driving licences:**

**[23]** With respect to a suspension of the convicted man's driving license, the Court is guided by the case of Cuevas, in which a sentence of one year was imposed in addition to a disqualification of his licence and compensation for the family of the victim. Cuevas is distinguishable from the present case in that there was evidence of a serious disregard for other road users as evidenced by the careless way in which he was observed driving, prior to the accident. In Gonzalez, it was felt that the view expressed in Cardinal, that "persons convicted of an offence under that section should invariably have their driving licence suspended", could be "indefensibly rigid and inflexible, and that there was no justification in the instant case for the imposition of such further treatment." The Justices respectfully refrained from ordering the suspension of Gonzalez's licence.

**[24]** Whilst this Court is by no means ignoring the seriousness of Mr. August's actions, it is felt that the additional punishment of suspending his driving license would not be necessary in the current circumstances: he has accepted responsibility and is remorseful. It does not appear to the Court that he is a danger to other motorists and users of the road, at this time.

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<sup>9</sup> Earl Armstrong para 5

**[25]** Conclusively, In constructing a sentence that reflects the circumstances of the case, having regard to the mitigating and aggravating features of this case, decided cases and the law, the Court is of the view that an appropriate sentence is:

**[26]** A fine of \$3,500 (payable within 3 months of this date) and 4 months imprisonment in default of payment.

Delivered this **26<sup>TH</sup>** day of **MARCH 2024**

**[27]** This is the Judgment of the Court.

**Natalie -Creary Dixon; J**  
High Court Judge

**By the Court Registrar**