

IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION- BELMOPAN

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

INDICTMENT NO. CR20230028C2

BETWEEN:

THE KING

and

MARIO ALDANA

Before:

The Honourable Madame Natalie -Creary Dixon, J

Appearances:

Mr. Cecil Ramirez, for the Crown

Mr Hurl Hamilton, for the Accused

2024:

January 1, 2024

February 26, 2024

March 20, 2024

April 10, 2024

May 15 & 24, 2024

JUDGMENT ON SENTENCING

[1] **NATALIE -CREARY DIXON, J:** Mario Aldana, has entered a plea of guilty to the offence of causing death by careless conduct pursuant to Section 108(2), Belize Criminal Code, Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2020 (“Criminal Code”). The Particulars are that on March 26, 2021, at about 7:30 pm, whilst driving a Ford F-250 motor vehicle on the George Price Highway, Georgeville Village, Belmopan, he failed to keep a proper lookout for oncoming traffic and failed to exercise due care and attention leading to a collision with a Honda 4-door car, carelessly causing the deaths of Lionel Chavarria and Charles Jones.

[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 Law;
4. Mitigating and Aggravating factors; and
4. Decided cases on the matter at hand

Summary of Agreed Facts

On March 26, 2021, sometime after 7:30 p.m., Lionel Chavarria, Charles Jones, and Ian Staine were in a Honda 4-door car that was parked with its hazard lights on off the George Price Highway in Georgeville Village. The said car was parked on the right-hand side of the road when travelling from the direction of Belmopan City to San Ignacio Town.

2. A Ford F-250 motor vehicle driven by Mario Aldana was travelling behind in the same direction. Mario Aldana lost control of said motor vehicle and collided into the rear of the Honda 4-door car.

3. As a result of the impact of the collision, Charles Jones sustained multiple injuries and was transported to the San Ignacio Town Hospital where he was pronounced dead whilst undergoing treatment. Lionel Chavarria died at the scene, and his body was taken to the San Ignacio Town Hospital where he was pronounced dead on arrival.
4. Dr Loyden Ken conducted a post-mortem examination on 23-year-old Charles Jones where he certified the cause of death to be multiple blunt force traumatic injuries due to road traffic accident.
5. Dr Loyden Ken conducted a post-mortem examination on 44-year-old Lionel Chavarria where he certified the cause of death to be multiple blunt force traumatic injuries due to road traffic accident.
6. Maria Aldana refused to provide a blood specimen for analysis

Victim Impact Statements

- [3]** Mr Akeem Staine and Mr Ian Staine brothers of the deceased Charles Jones, and step-sons of the other deceased Lionel Chavarria, both gave statements in this matter.
- [4]** Mr Ian Staine was a passenger in the vehicle when the accident occurred. He detailed his injuries as a fractured jaw and persistent back pain. As a result of these injuries, he was unable to eat solid foods for a long time, and his mandible still pains him because he cannot afford to do the required surgery; at times when he works too hard, he “vomits blood”. He still has terrible back pains and consequently finds it difficult to maintain steady employment.
- [5]** From the victim impact statement of Mr Akeem Staine, the Court learnt that the deceased Charles Jones was hard working and was in fact

engaged in construction on the said George Price Highway where he met his demise. Mr Staine also mentioned his stepbrother, the son of Lionel Chavarria, who was only nine years old when his father Lionel Chavarria died.

[6] Both Mr Ian Staine and Mr Akeem Staine outlined in their statement that they had a close relationship with their brother Charles Jones and that he was always the life of the party; they also stated that they were all deeply affected emotionally and mentally by the accident. As a result of the inability to cope with the immense grief, their mother, the common law wife of the deceased Lionel Chavarria, emigrated.

[7] Mr Aldana called one character witness, Mr Marcus Kingston. Mr Kingston told the Court that he and Mr Aldana had been friends for ten years, as they each own farm lands in the same area. He described Mr Aldana as a humble, respectful person who was always willing to help others and was not known to be a “problem person” or in any trouble with the law.

[8] Mr Aldana himself expressed remorse for causing the accident. His Counsel implored the Court to accept his expression of remorse and also to accept that this is an early guilty plea saving the Court time and resources.

THE LAW

[9] 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.”

[10] It is important to mention at this time that although the convicted man's actions claimed the lives of, not one, but two innocent persons, the Court must bear in mind that the convicted must only be sentenced in respect of one count, but the Court may consider all the probable consequences of his actions. This is outlined in Section 151(2) of the **Indictable Procedure Act**, which reads as follows:

'If a person by one act ... kills several persons ..., he shall be punishable only in respect of one of the persons so ... killed ..., but in awarding punishment the court may take into consideration all the ... probable consequences of the crime.'

[11] The **DPP V Ravell Gonzalez No. 2 of 2015**, supports this position: referencing **Michel Espat v The Queen, Criminal Appeal No 2 of 2015**, it states that:

'Mr Espat was punishable in respect of only one of the four children killed in the horrific accident with which that case was concerned. The Court, in the final paragraph of it (sic) judgment, explicitly stated: 'For the guidance of trial judges in future where similar situations arise the proper course in sentencing would be to impose sentence in respect of only one count and note that by reason of the provisions of section 156(2) of the Criminal (sic) Procedure Code (sic) no sentence is imposed in relation to all the other counts.'

[12] It is left to the Court now, to determine an informed and just sentence in this matter.

[13] The Court is assisted in determining an appropriate and just sentence by considering the case of **Teerath Persaud v R¹**, from the Caribbean Court of Justice. On the issue or the formulation of a just sentence, per Anderson JCCJ, implores the Court to bear in mind:

¹ (2018) 93 WIR 132

“... 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. (My emphasis).**

Aggravating and mitigating factors

- [14]** The Court then looked at the Aggravating and mitigating factors of this offence, in accordance with the methodology in Persaud’s case. A mitigating factor relative to the offence is the factor that the convicted did not intend to kill anyone.
- [15]** It is however, 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.
- [16]** It is an aggravating factor of the offence that the offence is prevalent in Belize.
- [17]** In continuing the sentencing methodology outlined above in Persaud, the Court then looked at the mitigating features of this case, relative to the

offender. The first is that the convicted pleaded guilty at an early stage; this saved the court time and resources and prevented the family from reliving the horrors and pain of that fateful night. Another mitigating fact particular to the offender is that he has no prior convictions of this nature.

Decided cases on the matter

- [18]** Having assessed the mitigating and aggravating features of this case relative to the offence and the offender, the Court considered similar decided cases on the matter. The decided cases of **Michel Espat v R**², **Cardinal Smith v The Queen**³, **DPP v Gonzalez**⁴ and **Victor Cuevas v The Queen**⁵ were helpful.
- [19]** The Court was able to arrive at a starting point from an assessment of the above cases. In the case of **Michel Espat** for example, a term of nine months was imposed. However, it was noted that the accused pleaded guilty to the more serious offence of manslaughter by negligence. Nevertheless, it was acknowledged in a decided case that the offence of causing death by careless conduct, although a lesser offence to manslaughter, is still a serious offence and should be treated as such in the sentencing process. **Espat** is still, therefore, a good case to use to determine a starting point in this case.
- [20]** Given the aggravating and mitigating factors considered in **Espat**, it is felt that a starting point of 2 years might have been considered in that case. In the present case then, a starting point of 12 months is considered appropriate.
- [21]** For the early guilty plea, a 1/3 discount of three months would be applied to

² Criminal Appeal no.8 of 1993

³ Criminal appeal no. 35 of 2005

⁴ Cr. Application for Leave to Appeal no. 2 of 2015

⁵ Cr. Application for Leave to Appeal no. 17 of 2007

the starting point of 12 months, leaving a total of eight months. For the genuine remorse expressed by the convicted man, the fact that he has no previous conviction of this nature, and the evidence of his good character, a reduction of two months for each of these mitigating factors would be applied, resulting in a remainder of six months imprisonment.

[22] It is worth mentioning that Espat can be distinguished from the present case in that there was an obvious aggravating factor of speeding in Espat. 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 the agreed statement of facts.

[23] Interestingly, the case of Espat noted that for the offence of causing death by careless conduct, there had been no custodial sentence imposed since 1990.

[24] The Court understood that to mean that custodial sentences were not usually imposed for those types of offences.

[25] The Court then considered whether a custodial sentence should be imposed in this matter. The case of Cardinal Smith is helpful. Mr Smith was spared a custodial sentence, because of the mitigating factors present in that case; those factors were 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.

[26] 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 in the circumstances. 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.⁶

[27] The case of **Victor Cuevas v The Queen** is also instructive in determining whether a custodial sentence should be imposed in this matter. 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 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”.

[28] There is no evidence that Mr Aldana’s conduct before and after the accident was as reprehensible as that of Mr Cuevas. In the circumstances, a custodial sentence will not be imposed.

[29] The Court was further assisted in arriving at an appropriate sentence by other decided authorities on this issue. These authorities outlined the general

⁶ 164. 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.

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 follows⁷:

- “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.

[30] 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**

[31] 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. 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. This Court does not believe that the present case is amongst the worst of the worst; nor did it consider that the convicted’s behaviour was akin to the behaviour of the accused persons in the cases of **Espat** and **Guerra**.

⁷ Para 5

(b) **A Fine**

[32] 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, considering that two persons have died, the Court will impose a sum of seven thousand dollars (\$7,000.00)

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

[33] 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.*”

[34] There is no indication of a previous payment to the family of the deceased, consequently, in considering and re-considering decided cases, as well as the circumstances of this case to include the means of the convicted man, and the fact that two persons from one family have died, the Court believes that compensation in the sum of eight thousand (\$8,000.00) to the family of the deceased is appropriate.

[35] The process of arriving at an appropriate sentence, in this case, also entailed the application of the generally accepted principles of sentencing⁸; this is against the background of the nature and seriousness of the offence, the

⁸ See R v Ramcharran para 19, where 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.”

circumstances surrounding its commission and the personal circumstances of the offender. This meant that the Court considered that this was a serious and prevalent offence which resulted in the horrific death of two innocent persons. The Court is of the view that the sentence should therefore serve as a deterrent whilst appreciating that the convicted is not without redemption and does not pose a danger to the public at this time.

[36] 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 as follows:

- (1) A fine of seven thousand dollars (\$7,000.00), payable within twelve months of this date) and 6 months imprisonment in default of payment; and
- (2) Compensation in the sum of eight thousand dollars (\$8,000.00) dollars to the family of the deceased, payable within eight months of this date

Delivered this **24** day of **May 2024**

[37] This is the Judgment of the Court.

Natalie -Creary Dixon; J
High Court Judge

By the Court Registrar