

IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

RE20190023C

BETWEEN

THE KING

and

LOUIS GILLETT

Prisoner

Before:

The Honourable Mr. Justice Nigel Pilgrim

Appearances:

Ms. Romey Wade, Crown Counsel for the Crown.

Mr. Aaron Tillett for the Prisoner.

2024: May 1st; and
May 15th.

MURDER-RE-SENTENCING

[1] Louis Gillett (“the prisoner”) was convicted after trial by judge and jury on 3rd March 2005 of the 2003 murder of Alvin Godfrey (“the deceased”), contrary to section 106 read along with

section 117 of the then **Criminal Code**¹ (“the Code”). The offending, in brief, is that on 29th April 2003 the prisoner shot and killed the deceased during an attempted robbery².

- [2] The prisoner was sentenced to life imprisonment by the trial judge which was upheld by the Court of Appeal on 27th October 2006. No minimum term of that life sentence was set by the trial judge acting in accordance with section 106(1) of the Code as then drafted. Subsequently, the National Assembly intervened and passed the **Criminal Code Amendment Act 2017** which provided as follows:

“106A(1):... every person who has been previously convicted of murder and is, at the time of the coming into force of the Criminal Code (Amendment) Act, 2017, serving a sentence of imprisonment for life, shall be taken before the Supreme Court for the fixing of a minimum term of imprisonment, which he shall serve before becoming eligible for parole, or for a consideration of whether he has become eligible to be considered for parole.”

- [3] The Caribbean Court of Justice (“the CCJ”), our apex court, considered the position of the imposition of life sentences in Belize in the context of that section in **August et al v R**³, per Byron P and Rajnauth Lee JCCJ:

“[125] In light of the findings above, it becomes necessary to address the fate of those persons currently incarcerated who were sentenced to life imprisonment for murder, under a now declared unconstitutional mandatory life imprisonment penal provision. In the exercise of our jurisdiction under s 20 of the Constitution, we must order that notwithstanding the provisions of s 106(A)(1), these offenders must be individually re-sentenced by a trial judge. Bearing in mind the utter abhorrence of society towards the crime of murder, the sentencing judge may well take the view that the fit sentence is one of life imprisonment unless, having regard to mitigating factors, a lesser

¹ Chapter 101 of the Substantive Laws of Belize, Revised Edition 2000.

² See **Louis Gillett v R**, Criminal Appeal No. 13 of 2005.

³ [2018] 3 LRC 552.

sentence is deserved.

[126] Since the sentences of these persons have been vacated by this judgment, as a practical interim measure, we order that all such persons must remain incarcerated until, in relation to his or her case, respectively, a sentencing hearing is completed. In the event that the sentencing judge should decide that a fit sentence is one of life imprisonment, then the judge shall stipulate a minimum period which the offender shall serve before becoming eligible for parole, or for a consideration of whether the prisoner has become eligible for parole. We would not expect that exercise to be rushed, but the entire exercise should be completed within a reasonable time. For the avoidance of doubt, a similar reasoning is to be applied to any person sentenced under the new regime to a mandatory life sentence for murder.

...

[127]... We further order that the sentences of those persons convicted of murder and imprisoned pursuant to the now repealed s 106 of the Criminal Code are vacated. Section 106A notwithstanding, these persons must be re-sentenced and must remain incarcerated until the conclusion of their respective re-sentencing hearings”

[4] This re-sentencing exercise is made pursuant to this order of the CCJ on 29th March 2018.

The Legal Framework

[5] The Court of Appeal has comprehensively considered sentencing for murder in Belize in **Michael Faux et al v R**⁴ 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

⁴ Criminal Appeal Nos. 24-26 Of 2019.

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 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 R⁵ 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

⁵ (2018) 93 WIR 132.

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. (emphasis added)

- [7] The Court is also guided by the decision of the CCJ in **Calvin Ramcharran v DPP**⁶ 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.***

⁶ [2022] CCJ 4 (AJ) GY.

[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 sentence⁷

[8] At about 5.30 pm on Tuesday 29th April 2003, the deceased was at the cashier's drawer in his shop, known as Godfrey's Shopping Center and situated in the King's Park area of Belize City. Also present and assisting the deceased in the shop was Ms. Silvia Succuqui. The deceased and Ms. Succuqui were both behind one of the two counters in the shop.

[9] Whilst Ms. Succuqui was attending to a customer, a young man entered the shop and ordered two bottles of Guinness stout. The prisoner, clad only in black shorts, then also entered the shop and stood in front of the counter. She went to get the stout. Having obtained the bottles of stout, Ms. Succuqui was still at the door of the room in question when she saw the first young man go behind the counter and order the deceased who, as noted earlier, was at the cashier's drawer, to "open". The deceased replied saying, "No boy. No boy."

[10] At that point the prisoner, now seen to be holding a gun in his hands, also went behind the counter. He, too, ordered the deceased to "open". Then, aiming at the face of the deceased, he shot him. Following the shooting of the deceased, the young man and the prisoner ran out of the shop. At some point after being shot, the deceased, his face bleeding, fell to the floor.

[11] Dr Estrada Bran stated that he performed a post-mortem examination on the body of the deceased and he found, on the upper right maxilla of the body, an irregular dark

⁷ Taken from the judgment of the Court of Appeal.

colouration characteristic of a scar due to a projectile from a firearm. The cause of death was pulmonary thromboembolism due to bilateral pneumonia as a consequence of facial firearm injury.

Analysis

[12] The Court begins, following *Persaud* by considering the aggravating features of the offending. The Trinidadian Court of Appeal decision of **Aguilera et al v The State**⁸ is helpful in the identification of those features in the case of murder. Those are, in the Court's mind, in this case as follows:

- i. There was the use of a weapon, namely a firearm. Belize, like the rest of the Caribbean, is under a wave of insecurity because of firearm involved violence. The Court's sentence needs to deter that sort of activity.
- ii. There were attacks to the head. The deceased was shot in the face.
- iii. The killing could be properly described as brutal having regard to the injuries.
- iv. There was an underlying motive of gain. The murder took place during the robbery of a hard-working businessman.
- v. This offence violated the sanctity of the deceased's home as his business was located in his home.
- vi. This offence was committed with others. The Court needs to deter crimes committed by groups.
- vii. This is a serious and prevalent offence in Belize which needs to be deterred. The son of the deceased, Mr. Gregory Godfrey, in his victim impact statement indicated that the murder of the deceased had a profound effect on him and his family. He said:

"The impact of the violent act committed against our father, Alvin Godfrey over two decades ago continues to affect and haunt our family to this day. The emotional wounds inflicted by the shooting have never fully healed, leaving lasting scars that have shaped our lives in profound ways.

...

⁸ 89 WIR 451 at para 19.

Our family's sense of security was shattered that day...

...

Furthermore, the loss of my father 21 years ago deeply affected our family not only emotionally but also financially in terms of our future well-being and legacy. The financial repercussions stemming from the aftermath of the crime have been substantial and enduring. From medical expenses to therapy costs, legal fees, and loss of income due to the psychological toll, our family has borne a heavy financial burden over the years having to close down the store. After creditors and bills were paid we had to make good on the little savings we had and seek employment in other places.

...

My father was a generous contributor to the King's Park Community. He assisted a couple needy families in the neighborhood with groceries for the month. He also assisted neighborhood children with money needed for their education.

Alvin Godfrey was a dedicated store owner who woke up each morning to open his store from 7 a.m. until 9 p.m. Monday to Saturday and from 7 a.m. to 1 p.m. on Sundays. He was committed to serving the people of his community and had not a single lazy bone in his body.

7. He considered his store his legacy. It fed us and helped many others. It pains us beyond words that our father never got to live his dream to retire and see us running his store. His murder changed the course of our lives. We no longer wanted to run the store after his death. We no longer felt safe in our community and our home, seeing as we lived upstairs of the shop. We eventually closed his store, his pride and joy.

8. My dad was the father to eleven children. He was an amazing father and provider. The actions of Mr. Gillett have robbed us of our dad, our children of their grandfather, my mom of her loving husband and the world of a good man. Our lives are forever changed and will never be the same because he chose to rob and kill a hard working man that day."

[13] There are no mitigating features in relation to this offending.

[14] The Court must now consider a starting point. The range of sentence for murder as noted in *Faux* is a life sentence with a minimum term of between 25-37 years unless there are ameliorating factors which necessitate a fixed term sentence. In this case the Court would impose a fixed term sentence owing to the fact that he was a teenager, 19 years old, at the time of this offence. The Court finds this killing vicious and senseless. It robbed Belize of a pillar of the community, destroyed a thriving business and caused a family to lose its hardworking patriarch. The Court finds a starting point of a fixed term sentence of 30 years imprisonment appropriate similar to that given to the appellants *Patrick Robateau*⁹, whose facts are similar, namely a shooting in the course of a robbery.

[15] The Court would now individualize the sentence. The prisoner has no current mental issues but has a history of mental illness, namely a previous diagnosis of schizophrenia. There is however no evidence that this would have contributed to the offending.

[16] The aggravating factors in relation to the offender are:

- i. His 15 prison infractions- This is a sign of disregard for discipline which is worrying but the Court notes that they became less as time went by the last being 2021.
- ii. Lack of remorse- The prisoner offered no signs of remorse neither at trial nor in his Social Inquiry Report ("SIR"). This raises real questions about whether the prisoner is making real efforts at rehabilitation.

[17] This will cause the Court to uplift the term of imprisonment by 2 years to 32 years imprisonment.

[18] The mitigating factors in relation to the offender are as follows:

- i. Positive activities in the prison- The prisoner has completed 1 program in 2007, according to the prison report, whilst at the prison. This is worrying having

⁹ Para 28 of *Faux*.

regard to the time he has spent incarcerated. However, any positive activity while at prison must be given at least symbolic credit.

- ii. SIR- The prisoner was a primary school dropout, because he was not interested in school, who lost his parents while incarcerated. His SIR is remarkable for its absence of corroboration of any advancement or change in his character from anyone other than him, but it does not say that he is beyond rehabilitation.

[19] With a view to encouraging the prisoner's arc towards rehabilitation the Court will reduce the sentence by 1 year to 31 years imprisonment.

[20] The Court would also vindicate the right of the prisoner to a fair hearing within a reasonable time under section 6(2) of the **Constitution**, the order for re-sentencing by the CCJ being made over 6 years ago, by a reduction of 1 year from the sentence. This power is exercised pursuant to the guidance from the CCJ in **Solomon Marin Jr. v R**¹⁰.

[21] This would leave a final fixed sentence of 30 years imprisonment.

[22] Pursuant to the Court's powers under section 162 of the **Indictable Procedure Act**¹¹ as considered in **R v Pedro Moran**¹² the Court would backdate the sentence to accommodate the time spent on remand. The Court would not take into account the time spent on remand for his unrelated conviction for drug trafficking on the authority of **R v da Costa Hall**¹³ as the prisoner should account separately for unrelated offending. The Court would make the sentence run from 15th October 2005, the day he would have finished his 18-month drug trafficking sentence. The Court would also deduct the 10

¹⁰ [2021] CCJ 6 (AJ) BZ at paras 104-112.

¹¹ Chapter 96 of the Substantive Laws of Belize, Revised Edition 2020.

¹² Criminal Application No. 1 of 2017 at para. 38.

¹³ (2011) 77 WIR 66 at para 18: "[it is] the prima facie rule of full credit for time served in pre-sentence custody. [18] We recognise a residual discretion in the sentencing judge not to apply the primary rule, as for example: (1) where the defendant has deliberately contrived to enlarge the amount of time spent on remand, (2) where the defendant is or was on remand for some other offence unconnected with the one for which he is being sentenced, (3) where the period of pre-sentence custody is less than a day or the post-conviction sentence is less than two or three days, (4) where the defendant was serving a sentence of imprisonment during the whole or part of the period spent on remand and (5) generally where the same period of remand in custody would be credited to more than one offence. This is not an exhaustive list of instances where the judge may depart from the prima facie rule, and other examples may arise in actual practice."

months that he would have spent on remand for this murder before he was convicted of drug trafficking from the global sentence.

[23] This would make the sentence to be imposed 29 years and 2 months imprisonment with effect from 15th October 2005.

DISPOSITION

[24] The Court sentences Louis Gillett for the crime of the murder of Mr. Alvin Godfrey on 29th April 2003 to a fixed term sentence of 29 years and 2 months imprisonment with effect from 15th October 2005.

Nigel Pilgrim

High Court Judge

Dated 15th May 2024