

IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

RE20190027C

BETWEEN

THE KING

and

HARVEY LEE HENDERSON

Prisoner

Before:

The Honourable Mr. Justice Nigel Pilgrim

Appearances:

Ms. Romey Wade, Crown Counsel for the Crown.

Mr. Andrew Bennett for the Prisoner.

2024: May 1st; and
May 15th.

MURDER-RE-SENTENCING

[1] Harvey Lee Henderson (“the prisoner”) was convicted after trial by judge and jury on 11th November 2005 of the 2004 murder of Alfredo Santos (“the deceased”), contrary to section 106 read along with section 117 of the then **Criminal Code**¹ (“the Code”). The offending, in

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

brief, is that on 11th November 2004 the prisoner chopped the deceased to death with a machete².

- [2] The prisoner was sentenced to life imprisonment by the trial judge which was upheld by the Court of Appeal on 13th March 2008. 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 sentence is deserved.

² See **Harvey Lee Henderson v R**, Criminal Appeal No. 31 of 2005.

³ [2018] 3 LRC 552.

[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 fixed term sentence...The Court notes that these fixed term

⁴ Criminal Appeal Nos. 24-26 Of 2019.

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 R**⁵ 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

⁵ (2018) 93 WIR 132.

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]** On 11th January 2004, Enrique Martinez and Martin Armstrong said they saw the prisoner, whom they knew, chop the deceased, a 76-year-old man, with a machete in Corozal. The medical evidence disclosed that he had suffered the following injuries:
- i. 3-inch blunt wound on the right lateral area of the forehead.
 - ii. 8-inch blunt wound on the left occipital temporal area, discovering bones of the area.
 - iii. Two 5-inch lined abrasions on the left upper back.
 - iv. The doctor explained “blunt wound” as an injury produced by a blunt and cutting instrument. A fracture on the left parietal temporal bone, lineal type. The fracture extended from the parietal, the temporal up to the frontal bone.
 - v. Brain appears with subarachnoid haemorrhage.
- [9]** The cause of death was traumatic shock as a consequence of blunt injuries to the head and the doctor suggested that the injuries were consistent with infliction by a machete.
- [10]** A witness for the prosecution, Jason Quan, gave evidence that he heard the prisoner bragging that he had chopped a man at about 5:00 p.m. on 11 January 2004.
- [11]** The prisoner made an unsworn statement in which he said that he had consumed a great deal of strong liquor beginning in the morning and continuing into the afternoon

⁷ Taken from the judgment of the Court of Appeal.

and he had not eaten. He became quite drunk – “I was block up”. He had no recollection of what went on that afternoon. He called three witnesses, Roque Gonzalez, a friend, who confirmed that himself and the prisoner consumed approximately five quarts of brandy between 9:00 am and 4:00 pm that evening.

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. The offence was against a vulnerable elderly person.
- ii. There was the use of a weapon, namely a machete.
- iii. There were attacks to the head.
- iv. The killing could be properly described as brutal having regard to the injuries.
- v. There was the voluntary consumption of alcohol which influenced the offence.

The editors of the leading text **Banks on Sentence**⁹ opined:

“The fact that an offender is voluntarily intoxicated at the time of the offence will tend to increase the seriousness of the offence provided that the intoxication has contributed to the offending. This applies regardless of whether the offender is under the influence of legal or illegal substance(s)...

An offender who has voluntarily consumed drugs and/or alcohol must accept the consequences of the behaviour that results, even if it is out of character.” (emphasis added)

- vi. This is a serious and prevalent offence in Belize which needs to be deterred. The granddaughter of the deceased, Ms. Martina De Paula Dominquez, in her victim impact statement indicated that the murder of the deceased had a profound effect on her and her family. She said:

⁸ 89 WIR 451 at para 19.

⁹ Volume 2, para 325.4.

“3. Up to present day I still can’t forget what happened to my grandfather that day. The day I saw him at home in his coffin I felt the whole world fall apart. I wanted to be with him at that moment.

4. My grandfather was not only a grandfather to me, but he was more than that, he was like my father because my father was not always present with us, he used to travel a lot for work and most of the time my grandfather was the one at home looking out for us.

5. My grandfather was a caring, joyful and a loving person, whenever there was a school trip he would pay the school trip for us without hesitation.

6. I am a mother of two children...They were both deprived of the loving moments that they would have spent with their great grandfather, since when my daughter was born he was the one looking out for me, he was the one who went to look for a taxi to take me to the hospital, since at that time I was living with my grandfather and my grandmother. The day my daughter born my grandfather was very excited and happy and said that my granddaughter is his other daughter since he only had one daughter.

7. I remember that my grandfather would go to Mary Hill School to get us every Friday and would take us to his home at 7th Avenue, Corozal Town where we would spend the weekend with him and my grandmother, we would spend great times there, he would take us to eat ice-cream, he was an awesome person.

...this incident has torn apart my life and the life of my entire family.”

[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 very young adult, 20 years old, and his exceptionally difficult family circumstances much like the appellant *Ramirez* in the case of *Faux*. The Court finds this killing vicious, cowardly and

senseless. It snatched the patriarch of a family from them in service to the Caribbean demon of strong rum. The Court finds a starting point of a fixed term sentence of 33 years imprisonment appropriate similar to that given to the appellant *Ramirez* in *Faux*, whose facts are similar. The Court does not apply the minimum term of 20 years imprisonment in the case of *Wayne Martinez* submitted by the prisoner to be appropriate as that case pre-dated *Faux* and is outside the range of sentence outlined in that case.

[15] The Court would now individualize the sentence. The prisoner has no current mental issues nor any history of mental illness.

[16] The aggravating factor in relation to the offender are his 11 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. This will cause the Court to uplift the term of imprisonment by 1 year to 34 years imprisonment.

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

- i. Good character- The prisoner was a man of hitherto good character, and this offence was his first brush with the law.
- ii. Positive activities in the prison- The prisoner has completed several programs from 2018 onward. He has a trusted position in the prison as a medical first responder. The Court sees this as efforts by the prisoner at rehabilitation and properly equipping himself for the life after.
- iii. A positive Social Inquiry Report ("SIR")- The prisoner grew up effectively without parents, his mother dying of cancer when he was aged 10 and his father lost to substance abuse and prison. He was bright, industrious and hardworking. He unfortunately fell into the cycle of substance abuse as the wheel often turns. His incarceration has led him to never one day meet his child who is reportedly in Mexico. He appears to have made monumental strides in the prison. The findings of the SIR in relation to the prisoner merits extensive quotation:

"Mr. Henderson seemed to have grown up psychologically and socially on the inside. As a graduate and active facilitator of numerous life skills

programs on the ground, he also seems to have induced some level of self-introspection, calm, and hopefulness. Eliciting self-introspection indicates that he has been reflecting on his own actions, thoughts, and emotions, which can be a crucial part of personal growth and change. He appears to have gotten used to jail life and has so far managed to uphold his reputation as an exemplar prisoner. Mr. Henderson has decided which parts of his history he must avoid starting afresh, and it looks that he has been actively carrying this out. Mr. Henderson seemed to have shown deep regret for his deeds and taken ownership of them. Due to the loss of his mother and the absence of his parents, his life prior to being imprisoned did appear to have been defined by a significant deal of emotional suffering and discomfort. Mr. Henderson seems ready for his discharge to be considered favourably.

...

It is without a doubt important to analyse Mr. Henderson's nineteen years of institutionalization because it has had a considerable external influence on his development and drive. It should be noted that despite his protracted imprisonment, Mr. Henderson appears to be handling this stage well."

He is described in glowing terms by family and friends of the family. He appears to have a network behind him to facilitate his reintegration. He is apparently that shining example of when the penal system works.

- iv. Genuine remorse- The prisoner has expressed genuine remorse for his crime as displayed in the SIR and has taken responsibility for his actions, not blaming demon drink, or a broken home. He has accepted that he is where he is because of his choices. He seemed to have spent his life trying to undo what his hands wrought on 11th November 2004.

[18] The Court notes that in the sentencing process it is not just sentencing an offence, it is sentencing an offender. With a view to the prisoner's arc towards rehabilitation the Court will reduce the sentence by 7 years to 27 years imprisonment.

[19] 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.

[20] This would leave a final fixed sentence of 26 years imprisonment.

[21] 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 order the sentence to run from 10th November 2005.

DISPOSITION

[22] The Court sentences Harvey Lee Henderson for the crime of the murder of Mr. Alfredo Santos on 11th November 2004 to a fixed term sentence of 26 years imprisonment with effect from 10th November 2005.

Nigel Pilgrim

High Court Judge

Dated 15th May 2024

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.